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Vol. I.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 352-73

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT,

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY
ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 28, 1906.

(20,317.)

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a In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

b 27723.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously Sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

c 27829.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY; Original Defendants; SIOUX CITY STOCK YARDS COMPANY; ST. JOSEPH STOCK YARDS COMPANY; ST. PAUL UNION STOCK YARDS COMPANY; RAILROAD & WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; T. M. SINCLAIR & COMPANY, LIMITED, and THE UNION STOCK YARDS COMPANY OF OMAHA, Intervenors.

1 Mr. L. A. Shaver, Mr. C. B. Morrison, United States district attorney, Mr. S. H. Cowan, in behalf of the complainant.

Mr. Edward Baxter, associate counsel for B., C. R. & N. Ry.; C., St. P., M. & O. Ry.; Chicago & Alton Ry.; C. & N. W. Ry.; C., B. & Q. Ry., C., M. & St. P. Ry.; C., R. I. & P. Ry.; Hannibal & St. Joseph Ry.; Illinois Central R. R.; Iowa Central Ry.; K. C., St. J. & C. B. Ry.; M. & St. L. Ry.; Omaha, Kansas City & Eastern Ry., defendants.

Mr. C. A. Severance, for the Chicago Great Western Ry. Co., defendant, and the St. Paul Union Stock Yards Co., intervening petitioner.

Mr. S. A. Lynde, for the C. & N. W. Ry. Co., defendant; Mr. Chester M. Dawes, for the C., B. & Q. Ry. Co., defendant.

Mr. James C. Jeffery, for the Missouri Pacific Ry. Co., defendant.

2 Mr. Charles A. Clark, for T. M. Sinclair & Co., Limited, intervening petitioner.

Messrs. Milchrist & Scott, for the Sioux City Stock Yards Co., intervening petitioner.

Mr. Ira B. Mills, for the Minnesota Railroad & Warehouse Commission, intervening petitioner.

Mr. F. T. Ransom, for the Omaha Packing Co., intervening petitioner.

3 Pleas in the Circuit Court of the United States for the Northern District of Illinois-Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Solomon H. Bethea, District Judge of the United States for the Northern District of Illinois, on Monday, the twentieth day of November, being one of the days of the regular July Term of said Court, in the year of our Lord one thousand nine hundred and five and of our independence the one hundred and thirtieth year, when the following proceedings were had to-wit:

MARSHALL E. SAMPSELL, *Clerk.*

4 Northern District of Illinois, Eastern Division.

27723.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously Sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

5 Be it remembered that on this day to-wit: the twenty-ninth day of April, 1905, came the Interstate Commerce Commission by Edward A. Moseley, the Secretary thereof, thereunto duly authorized and C. B. Morrison, United States District Attorney and filed in the clerk's office of said Court a certain Petition in the words and figures following to-wit:

6 In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois. In Equity.

No. —.

THE INTERSTATE COMMERCE COMMISSION

v.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO AND ALTON RAILWAY COMPANY; THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; THE HANNIBAL AND ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY; THE OMAHA, KANSAS CITY AND EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

To the Circuit Court of the United States, sitting in equity, within and for the northern division of the northern district of Illinois:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by various subsequent acts, humbly complaining, showeth:

I.

That the Chicago Great Western Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of St. Paul, in the State of Minnesota; that the Chicago, St. Paul, Minneapolis and Omaha Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of St. Paul, State of Minnesota; that the
7 Chicago and Alton Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of New York, State of New York; that the Chicago and Northwestern Railway Company is a corporation chartered and existing under and by virtue of the laws of the States of Illinois and Wisconsin, having its principal offices in the city of Chicago, State of Illinois, and in the city of New York, State of New York; that the Chicago, Burlington and Quincy Railroad Company is a corporation char-

tered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, State of Illinois; that the Chicago, Milwaukee and St. Paul Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of Chicago, State of Illinois; that the Chicago, Rock Island and Pacific Railway Company is a corporation chartered and existing under and by virtue of the laws of the States of Illinois and Iowa, having its principal office in Chicago, State of Illinois; that the Illinois Central Railroad Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, State of Illinois; that the Iowa Central Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office at Minneapolis, in the State of Minnesota; that the Minneapolis and St. Louis Railroad Company is a corporation chartered and existing under and by virtue of the laws of the States of Minnesota and Iowa, having its principal office in the city of Minneapolis, State of Minnesota; that the Missouri Pacific Railway Company is a corporation chartered and existing under and by virtue of the laws of the States of Missouri, Kansas, and Nebraska, having its principal offices in St. Louis, State of Missouri, and New York, State of New York; that the Missouri, Kansas City and Texas Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Kansas, having its principal offices in St. Louis, State of Missouri, and Parsons, State of Kansas; that the Wabash Railroad Company is a corporation chartered and existing under and by virtue of the laws of the States of Michigan, Ohio, Indiana, Illinois, and Missouri, having its principal office in the city of St. Louis, State of Missouri; that the Wisconsin Central Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of Milwaukee, State of Wisconsin; that the properties of the Burlington, Cedar Rapids and Northern Railway Company, a corporation created June 22, 1876, under the laws of the State of Iowa, were on June 15, 1903, sold to defendant herein, the Chicago, Rock Island and Pacific Railway Company, and its line has since been and is now operated by said last-named company;

8 that the properties of the Hannibal and St. Joseph Railroad Company, an incorporation under the laws of the State of Missouri, were purchased in the year 1901 by defendant herein, the Chicago, Burlington and Quincy Railroad Company, and its line has since been and is now operated by said last-named company; that the properties of the Kansas City, St. Joseph and Council Bluffs Railroad Company, an incorporation under the laws of the State of Missouri, were purchased in the year 1901 by defendant herein, the Chicago, Burlington and Quincy Railroad Company, and its line has since been and now is operated by said last-named company; that the properties of the Omaha, Kansas City and Eastern Railroad Company, a corporation under the laws of the State of Missouri, were purchased by the Quincy, Omaha and Kansas City Rail-

road Company in the year 1902, and its line has since been and now is operated by said last-named company, and that said last-named company is a corporation chartered and existing under the laws of the State of Missouri, having its principal office in the city of Kansas City, State of Missouri.

II.

That the defendants were on the 5th day of April, 1902, and ever since have been and still are common carriers engaged in the transportation of persons and property by railroad under joint through rates and as members of continuous through lines between points in different States of the United States, and particularly in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the State of Illinois, from points on the Missouri River, extending from Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, both inclusive, and from south St. Paul, in the State of Minnesota, or from other points in the territory between the Missouri River or South St. Paul and Chicago, and as such common carriers and in respect to such transportation were and are subject to the provisions of the said act to regulate commerce and the amendments thereto.

III.

That on said April 5, 1902, the Chicago Live Stock Exchange, an incorporated association, with its office in the city of Chicago, State of Illinois, filed under section 13 of the said act to regulate commerce a petition or complaint to the complainant herein, the Interstate Commerce Commission, alleging violations on the part of the defendants of certain provisions of said act, as at large and more fully appears in and by the said complaint or petition on file in the office of said Commission, a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit A; and that a copy of said complaint or petition, Exhibit A hereto, attested by the secretary of said Commission, under the seal of said Commission, was duly forwarded by said Commission to each of said defendants as required by section 13 of said act.

9 IV.

That on various dates between April 18, 1902, and November 6, 1902, the defendants, with the exception of the Chicago and Northwestern Railway Company and the Omaha, Kansas City and Eastern Railroad Company, filed answers to said complaint, Exhibit A hereto, as at large and more fully appears in and by said answers on file in the office of the complainant herein, copies of which answers are hereto annexed and made a part of this petition as exhibits B to O, inclusive.

V.

That thereafterwards the said cause, being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the complainant herein, the said Interstate Commerce Commission, at various times and places at which the parties complainant and de-

fendant appeared by their attorneys or had due notice to appear, and at the said hearings testimony was taken in behalf of said parties, and thereafterwards, on June 26, 1903, argument was heard by complainant in behalf of said parties at Washington, D. C.

VI.

That on January 7, 1905, the complainant herein duly determined the matter in controversy between the said parties before it, and made a report in writing in respect thereof, setting forth its findings of facts and its conclusion based on said facts, namely, that the "relation of rates maintained and enforced by the defendants, whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes an undue and unreasonable prejudice and an unjust discrimination, in violation of the provisions of the act to regulate commerce," as at large and more fully appears in and by the said report of complainant, a copy whereof is hereunto annexed and made a part of this petition as Exhibit P.

VII.

That forthwith upon the determination of said cause as aforesaid, to wit, on said 7th day of January, 1905, the complainant duly formulated an order and notice in the premises based upon its aforesaid findings and determination, requiring the defendants to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing the said unlawful relation of rates and from further continuing said unlawful prejudice and discrimination, which said order now remains in full force and effect, and a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit Q.

VIII.

That thereafterwards the complainant herein, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report, Exhibit P hereto, together with a copy of its said order, Exhibit Q hereto, to be delivered to said defendants herein; and complainant shows that the said defendants, unmindful of their duty in that regard, have through their officers, servants, and attorneys wholly disregarded and set at naught said order of complainant, Exhibit Q hereto, and have willfully and knowingly violated and disobeyed the same and still do neglect and refuse to comply with the same or any part thereof.

IX.

And the complainant charges that the said relation maintained by the defendants between the rates on live cattle and live hogs, on the

one hand, and on the dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter as aforesaid, creates an undue and unreasonable prejudice and operates as an unjust discrimination, in violation of sections 3 and 2 of the act to regulate commerce, and further results in unjust and unreasonable rate charges on said live cattle and live hogs in violation of section 1 of said act.

X.

Wherefore the complainant prays—

1. That a subpœna or other suitable process may issue, according to the course of equity, requiring the said defendants herein to appear at such time and place as this honorable court may determine, then and there to make full, complete, and perfect answer to all the matters and things hereinabove stated and charged, as fully and particularly as if each of the said defendants were specially interrogated in regard thereto, but not under oath, which is hereto waived.

2. That upon the filing of this petition an order may be made by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing bill of complaint.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as
11 the court may think needful and lawful to enable it to form a just judgment of the matters and things stated and charged in the foregoing bill of complaint.

5. That upon the final hearing hereof, a decree may be entered granting to complainant a writ of injunction, or other proper process, mandatory or otherwise, to restrain the said defendants, and each of them, and their respective officers, servants, and agents, from further continuing in their violation of and disobedience to the said order of the complainant.

6. That a decree may be entered requiring the said defendants and each of them to pay such sum of money not exceeding the sum of $500 for every day after a day to be named in such decree that they shall respectively fail to obey the said injunction or other proper process.

7. That a decree may be entered requiring the said defendants to pay the costs of this proceeding and reasonable counsel fees.

8. For such other and further relief in the premises as to the court may seem meet and as justice and the equities of the cause may require.

[Seal Interstate Commerce Commission, 1887.]

THE INTERSTATE COMMERCE COMMISSION,
By EDWARD T. MOSELEY,
The Secretary Thereof, Thereunto Duly Authorized.
G. B. MORRISON,
United States District Attorney, for Petitioner.

12 & 13 EXHIBIT A.

14 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
against
ATCHISON, TOPEKA AND SANTA FE RAILWAY; BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY; CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY; CHICAGO AND ALTON RAILWAY COMPANY; CHICAGO AND NORTHWESTERN RAILWAY; CHICAGO, BURLINGTON AND QUINCY RAILWAY; CHICAGO GREAT WESTERN RAILWAY; CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY; CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY; HANNIBAL AND ST. JOSEPH RAILROAD; ILLINOIS CENTRAL RAILROAD; IOWA CENTRAL RAILWAY; KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD; MINNEAPOLIS AND ST. LOUIS RAILROAD; MISSOURI PACIFIC RAILWAY; MISSOURI, KANSAS AND TEXAS RAILWAY; OMAHA, KANSAS CITY AND EASTERN RAILROAD; FRISCO SYSTEM—ST. LOUIS AND SAN FRANCISCO RAILROAD; WABASH RAILROAD; WISCONSIN CENTRAL RAILWAY COMPANY.

The petition of the above-named complainant respectfully shows:

I.

That the Chicago Live Stock Exchange is an association of live stock commission men, raisers, owners, shippers, and slaughterers of live stock; that its office is in the city of Chicago, State of Illinois; that live stock owned by the members of the Chicago Live Stock Exchange, or the shippers whom they represent, is being constantly shipped over the lines of defendant carriers from all points in the West to Chicago, in the State of Illinois.

II.

That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Missouri, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Nebraska, and Colorado and points in the States of Illinois and Missouri, and as such common carriers are subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That the rates charged, collected, or received by defendant carriers for the transportation of live stock, in carloads, from points in Iowa, Missouri, Minnesota, and Wisconsin to the city of Chicago, in the State of Illinois, are in and of themselves, and relatively com-
15 pared with rates charged by defendant carriers on the product of live stock, unjust and unreasonable, in violation of section 1 of the act to regulate commerce.

IV.

That the raisers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to an undue and unreasonable prejudice or disadvantage by reason of the rates charged, collected, or received by defendant carriers for transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof in violation of section 3 of the act to regulate commerce.

V.

That the rates charged, collected, or received by defendant carriers for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof, and that the rates charged, collected, or received by defendant carriers for the transportation of live stock from said markets and intermediate points in Iowa, Missouri, Wisconsin, and Minnesota to Chicago, subject the city of Chicago and The Chicago Live Stock Exchange to an undue and unreasonable prejudice or disadvantage and are unlawful, in violation of section 3 of the act to regulate commerce.

VI.

That the decisions of the Interstate Commerce Commission in the case of The Board of Trade of the City of Chicago *v.* The Chicago and Alton Railroad *et al.*, with regard to "relative rates on live hogs and hog product from Missouri River points and intermediate points in Iowa and Missouri to Chicago," decided October 16, 1890, and in the case of John P. Squire & Co. *v.* The Michigan Central R. R. Co. *et al.*, in the matter of "relative rates on live hogs, live cattle, and the dressed product of each," decided April 21, 1891, established certain principles applicable to rates on live stock and its product, and that divers tariffs of defendant carriers violate the principles therein set forth and are unlawful.

Wherefore the petitioner prays that the defendants may be required to answer the charges herein, and that after due hearing and investigation an order may be made commanding the defendants to cease and desist from said violations of the act to regulate commerce and for such other further orders as the Commission may deem necessary in the premises.

Chicago, Ill., March 31, 1902.

THE CHICAGO LIVE STOCK EXCHANGE,

(Signed) By T. W. TOMLINSON,
Railway Representative.

16 & 17 STATE OF ILLINOIS, *County of Cook, ss:*

T. W. Tomlinson, being duly sworn, says that he is the railway representative of The Chicago Live Stock Exchange, the complainant in this proceeding, and that the matters set forth in the foregoing petition are true, as he verily believes.

(Signed) T. W. TOMLINSON.

Subscribed and sworn to before me this 31st day of March, 1902.
[NOTARIAL SEAL.] (Signed) CHAS. W. BAKER,
Notary Public.

18 & 19 EXHIBIT B.

20 & 21 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
against
ATCHISON, TOPEKA AND SANTA FE RAILWAY; BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY; CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY ET AL.

The Chicago, St. Paul, Minneapolis and Omaho Railway Company, answering for itself the complaint herein, alleges:

1. That it admits that it is a common carrier, engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Wisconsin, Minnesota, South Dakota, Nebraska, and points in the State of Illinois, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof and supplemental thereto, and that it has been and is engaged in the transportation of the product of live stock from St. Paul and from points on its line in Iowa, Wisconsin, Minnesota, South Dakota, and Nebraska to Chicago.

2. That it denies that it has been or is engaged in the transportation of the products of live stock from Missouri River points to Chicago.

3. Except as above admitted, it denies each and every allegation of the complaint.

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,
By JAS. T. CLARK,
Its Second Vice-President and General Traffic Manager.

STATE OF MINNESOTA, *County of Ramsey, ss:*

James T. Clark, being duly sworn, says that he is second vice-president and general traffic manager of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, the defendant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) JAMES T. CLARK.

Subscribed and sworn to before me this April, A. D. 1902.
[SEAL.] (Signed) PIERCE BUTLER,
Notary Public, Ramsey County, Minn.

22 & 23 EXHIBIT C.

24 & 25 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY and Others, Defendants.

Now comes the above-named defendant, Chicago, Milwaukee and St. Paul Railway Company, and answers the petition of the complainant as follows:

1. That whether the Chicago Live Stock Exchange is an association, as averred in said petition, or whether live stock that is shipped over its lines of road from points in the west to Chicago is owned by the members of said Exchange, or by shippers whom they represent, this defendant denies any knowledge or information thereof sufficient to form a belief.

2. This defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad, and as such is subject to the act of Congress referred to in said petition.

3. It denies the allegations contained in Paragraphs III, IV, V, and VI of said petition.

Wherefore it demands that said petition be dismissed.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
By J. H. HILAND, *Its Traffic Manager.*

STATE OF ILLINOIS, *County of Cook, ss:*

J. H. Hiland, being duly sworn, says that he is the traffic manager of the above-named defendant, Chicago, Milwaukee and St. Paul Railway Company; that he has read the foregoing answer and knows the contents thereof, and that the same is true, as he verily believes.

(Signed) J. H. HILAND.

Subscribed and sworn to before me this 22d day of April A. D. 1902.

[SEAL.] (Signed) W. D. MILLARD,
Notary Public, Cook County, Illinois.

26 & 27 EXHIBIT D.

28 Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, WABASH RAILROAD COMPANY ET AL.

The Wabash Railroad Company, one of the defendants named in this proceeding, for answer to the complaint herein respectfully states as follows:

1. That this defendant is not advised as to what constitutes the Chicago Live Stock Exchange, or its nature or objects as an association, but presumes that shipments of live stock owned by its members, or shippers represented by them, are being made over this defendant's lines and those of other carriers from points in the West on said lines to the City of Chicago, State of Illinois, but this defendant denies the right of the petitioner, the Chicago Live Stock Exchange, to complain, as in its petition, against this defendant on account of any shipments of live stock owned by said members or shippers represented by such members.

2. That this defendant admits it is a common carrier, engaged in the transportation of passengers and property by railroad between points on its lines in the States of Iowa and Missouri to points on its lines in the States of Missouri and Illinois, and also to points on its lines in other States east of Illinois, and that as such common carrier it is subject to the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

3. That this defendant is not advised as to the rates charged, collected, and received by its codefendants for the transportation mentioned in said petition, but that the rates charged, collected, and received by this defendant for the transportation of live stock in carloads from points in Iowa and Missouri to the city of Chicago, in the State of Illinois, are not in and of themselves, and relatively compared with rates charged by this defendant on the product of live stock, unjust and unreasonable, and in violation of section 1 of the act to regulate commerce, as in the petition alleged.

4. That this defendant is not advised as to the acts of its codefendants in respect to the matters charged, but that the raisers of live stock in the States of Iowa and Missouri, or elsewhere, are not subjected to an undue and unreasonable prejudice, or disadvantage by reason of the rates charged, collected, or received by this de-
29 fendant for transportation of the product of live stock from Kansas City, or any point named in said petition, to Chicago and points east thereof, in violation of section 3 of the act to regulate commerce, as alleged in said petition.

5. That this defendant is not advised as to the rates charged, collected, and received by its codefendants for the transportation mentioned, but the rates charged, collected, and received by this defend-

ant for the transportation of the product of live stock from Kansas City and other points named in said petition to Chicago, and points east thereof, and the rates charged, collected, and received by this defendant for the transportation of live stock from said markets and intermediate points in Iowa, Missouri, and other points named in said petition do not subject the city of Chicago and the petitioner to an undue and unreasonable prejudice or disadvantage, and are not unlawful and in violation of section 3 of the act to regulate commerce, as in said petition alleged.

6. That this defendant is advised, and so states the fact to be, that divers tariffs of this defendant do not violate the principles established in the decisions of this honorable Commission in the case of the Board of Trade of the City of Chicago *v.* The Chicago and Alton Railroad Company *et al.*, and in the case of John P. Squire & Co. *v.* The Michigan Central Railroad Company *et al.*, and that this defendant's said tariffs are not unlawful as in said petition alleged.

Wherefore, this defendant prays that the complaint in this proceeding may as to it be dismissed.

THE WABASH RAILROAD COMPANY,
By S. B. KNIGHT,
Its General Freight Agent.

STATE OF MISSOURI, *City of St. Louis, ss:*

S. B. Knight, of lawful age, being duly sworn, on oath states that he is the general freight agent of the Wabash Railroad Company, one of the defendants in this proceeding, and that the foregoing answer is true, as he verily believes.

(Signed) S. B. KNIGHT.

Subscribed and sworn to before me this 22d day of April, A. D. 1902, and I certify that I am authorized to administer oaths.

[SEAL.] (Signed) JOSEPHINE K. BAKER,
Notary Public.

My commission expires January 23, 1905.

30 & 31 EXHIBIT E.

32 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
against
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY and Others, Including THE ILLINOIS CENTRAL RAILROAD COMPANY, Defendants.

Separate Answer of Illinois Central Railroad Company to the Petition of the Above-named Complainant.

This defendant, not admitting or denying any of the allegations in respect of the other railroad companies named in the caption to the

petition, and demanding strict proof of all of same, if it shall become material to its rights, answering only so much of said petition as applies specifically to this defendant, says:

I.

It is admitted that the Chicago Live Stock Exchange is an asociation of live stock commission men, raisers, owners, shippers, and slaughterers of live stock; that its office is in the city of Chicago, in the State of Illinois, and that live stock owned by members of said exchange, or shippers whom they represent, is being constantly shipped over the lines of defendant carrier from all points on its railroad in the west to Chicago in the State of Illinois.

II.

This defendant is engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Missouri, Wisconsin, Minnesota, and South Dakota and points in the State of Illinois. It admits that it is a common carrier and subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

It denies that the rates charged, collected, or received by defendant for the transportation of live stock in carloads between the points above designated are, in and of themselves, unjust and unreasonable, and it denies that the said rates are unjust and unreasonable in their relation to the rates charged by defendant on the product of live stock between the same points. It denies that there is anything in the relation between the charges made upon live stock and the product of live stock which is in violation of section 1 of the act to regulate commerce.

33 IV.

It denies that it transports any product of live stock from Kansas City and South St. Joseph, and it denies that the raisers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to an undue and unreasonable prejudice or disadvantage by reason of the rates charged, collected, or received by defendant for the transportation of the product of live stock from any points on its road to Chicago and points east thereof, and it denies that any acts or doings of this defendant in this respect are in violation of section 3 of the act to regulate commerce. For a short time prior to the filing of the petition, the proportions accruing to this company of the rates on live stock from South Omaha and Sioux City to points east of Chicago were greater than the proportions which accrued to it on packing-house product, but this has now been changed so that the proportions of such through rates which this company receives are the same on both commodities to all destinations east of the Indiana-Illinois State line.

V.

It denies that the rates charged, collected, or received by this defendant for the transportation of live stock from any points on its railroad in any of the States named to Chicago, and through its connections to points east thereof, and that the rates charged, collected, or received by this defendant for the transportation of live stock from points on its railroad and intermediate points in any of the States named to Chicago, subject the city of Chicago and the Chicago Live Stock Exchange to an undue and unreasonable prejudice or disadvantage, and it denies that anything done by it in respect of these matters is violative of section 3 of the act to regulate commerce.

VI.

Defendant neither admits nor denies the allegations of the sixth paragraph of complainant's petition, but says that it tenders only a proposition of law.

Wherefore the defendant prays that the complaint in this proceeding be dismissed.

ILLINOIS CENTRAL RAILROAD COMPANY,
By J. T. HARAHAN,
Second Vice-President.

STATE OF ILLINOIS, *County of Cook, ss:*

J. T. Harahan, being duly sworn, says that he is the second vice-president of the Illinois Central Railroad Company, defendant in this proceeding, and that the foregoing is true as he verily believes.

(Signed) J. T. HARAHAN.

Subscribed and sworn to before me this 23d day of April, 1902.

[SEAL.] (Signed) ANDREW P. HUMBURG,
Notary Public.

34 & 35 EXHIBIT F.

36 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
THE CHICAGO GREAT WESTERN RAILWAY ET AL., Defendants.

And now comes the Chicago Great Western Railway Company, and, for answer to the petition of the Chicago Live Stock Exchange, states and alleges:

1. It admits that the Chicago Live Stock Exchange is an association of live-stock commission men doing business at the stock yards in the city of Chicago, and denies that it has any knowledge or information sufficient to form a belief as to whether they are raisers, shippers, owners, or slaughterers of live stock, or as to whether they ship over defendant's line of railroad.

2. Defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad between Kansas City, Mo., Leavenworth, Kans., St. Joseph, Mo., and intermediate stations to Chicago, and from St. Paul and Minneapolis and intermediate stations to Chicago, and that it is subject to the provisions of the act to regulate commerce known as the "Interstate-commerce act;" defendant admits and alleges that it makes joint tariffs and participates in the transportation of commodities, both east of Chicago and west of Kansas City, Leavenworth, St. Paul and Minneapolis, and other Mississippi and Missouri River points, as more fully appears from its tariffs on file with the Interstate Commerce Commission.

3. Defendant denies that the rates it is charging, collecting, and receiving for the transportation of live stock in carloads from points in Iowa, Missouri, and Minnesota to the city of Chicago, in the State of Illinois, are in and of themselves, or relatively compared with rates charged by it on the product of live stock, unjust and unreasonable and in violation of section 1 of the act to regulate commerce.

4. Defendant denies that the raisers of live stock in the States of Iowa, Missouri, Minnesota, and on the line of the defendant's road are subject to any undue or unlawful prejudice or disadvantage by reason of the rates charged, collected, or received by defendant for transportation of the product of live stock from Kansas City, St. Joseph, or South St. Paul to Chicago and points east thereof in violation of section 3 of the act to regulate commerce.

37 5. Defendant denies that the rates charged, collected, or received by : for the transportation of the product of live stock from Kansas City, South St. Joseph, and South St. Paul to Chicago and points east thereof, or from intermediate points in Iowa, Missouri, and Minnesota to Chicago, subject the city of Chicago and the Live Stock Exchange to any undue and unlawful prejudice or disadvantage; and denies that the said rates are unlawful and in violation of section 3 of the act to regulate commerce, or otherwise.

6. Defendant denies that its tariffs violate the principles set forth in any decision of the Interstate Commerce Commission or in the law to regulate commerce, and denies that the said tariffs are unlawful.

Wherefore, the Chicago Great Western Railway Company asks that this petition be dismissed.

____ ____,
General Counsel.

STATE OF MINNESOTA, *County of Ramsey, ss:*

Frank B. Kellogg, being duly sworn, on his oath says that he is the general counsel of the Chicago Great Western Railway; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

____ ____.

38 & 39 EXHIBIT G.

40 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,

v.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; CHICAGO AND ALTON RAILWAY COMPANY; CHICAGO AND NORTHWESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY ET AL., Defendants.

Now comes the Chicago, Rock Island and Pacific Railway Company, one of the defendants herein, and for answer to said complaint, says:

1. It has no knowledge as to the status of the said complainant as an association or otherwise, or as to the business in which it is engaged, or whether the live stock shipped over its lines or from points in the West to Chicago is owned by members of said Chicago Live Stock Exchange, or by shippers whom they represent, sufficient to form a belief.

2. This defendant admits it is a common carrier engaged in the transportation of passengers and property between points in the States of Iowa, Missouri, Kansas, Nebraska, Colorado, and Illinois, and that it is subject to the act to regulate commerce of February 4, 1887, and subsequent amendatory acts.

3. It denies each and every allegation contained in Paragraph III of said complaint.

4. It denies each and every allegation contained in Paragraph IV of said complaint.

5. It denies each and every allegation contained in Paragraph V of said complaint.

6. It denies each and every allegation contained in Paragraph VI of said complaint.

Wherefore the said defendant prays that the said complaint be dismissed.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By ROBERT MATHER, *General Attorney.*

41 STATE OF ILLINOIS, *County of Cook, ss:*

I, J. M. Johnson, being first duly sworn, on oath state that I am the third vice president and freight traffic manager of the Chicago, Rock Island and Pacific Railway Company; that I have

read the foregoing answer of the said defendant, and that the facts therein stated are true as I verily believe.

(Signed) J. M. JOHNSON.

Subscribed and sworn to before me this 23d day of April, A. D. 1902.

[SEAL.] (Signed) CHARLES T. SCHWARZ,
Notary Public, Cook County, Illinois.

42 & 43 EXHIBIT H.

44 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

The Chicago and Alton Railway Company, one of the defendants in the above proceeding, for answer to the petition of the complainant, respectfully states that it is a common carrier engaged in the transportation of passengers and property over its lines of railroad between Chicago, Ill., and Kansas City, in the State of Missouri, and said Kansas City and East St. Louis, in the State of Illinois, and intermediate stations between those points, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

This defendant, further answering, denies, as charged in said petition, that the rates charged, collected, or received by it for the transportation of live stock in carloads from points on its line of railroad in Missouri to the city of Chicago, in the State of Illinois, are in and of themselves, and relatively when compared with rates charged on the product of live stock, in any respect unjust and unreasonable and in violation of section 1 of the act to regulate commerce.

This defendant, further answering, denies, as charged in said petition, that the raisers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to an undue and unreasonable prejudice or disadvantage by reason of the rates charged, collected, or received by this defendant for transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof, in violation of section 3 of the act to regulate commerce.

This defendant, further answering, denies, as charged in said petition, that the rates charged, collected, or received by this defendant for the transportation of the product of live stock from the points above stated to Chicago and points east thereof, and that the rates charged, collected, or received by it for the transportation of live stock from those markets and intermediate points in Iowa, Missouri, Wisconsin, and Minnesota to Chicago, subject the city

of Chicago and the Chicago Live Stock Exchange to an undue and unreasonable prejudice or disadvantage, and that they are unlawful, in violation of section 3 of the act to regulate commerce.

45 This defendant, further answering, denies, as charged in said petition, that divers of its tariffs violate any principle applicable to rates on live stock or its products that were established in the suits mentioned in the sixth clause of the petition, and it denies that its tariffs are unlawful.

This defendant, further answering, says that it will maintain and prove that all rates charged, collected, or received by it for the transportation of live stock or its product are in all respects just and reasonable, and do not discriminate in any way or subject the city of Chicago, or the petitioner, or any person or persons, locality or localities to any undue and unreasonable prejudice or disadvantage in any manner whatsoever.

This defendant, further answering, denies each and every allegation of the petition not herein expressly admitted or denied.

And having fully answered, it prays to be dismissed with its reasonable costs, etc.

THE CHICAGO AND ALTON RAILWAY COMPANY,
By WILLIAM BROWN, *Its General Solicitor.*

STATE OF ILLINOIS, *Cook County, ss:*

Fred A. Wann, being duly sworn, deposes and says that he is general freight agent of the Chicago and Alton Railway Company, one of the defendants in the above proceedings; that he has read the above and foregoing answer of said company and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

(Signed) FRED A. WANN.

Subscribed and sworn to before me this 23d day of April, 1902.

[SEAL.] (Signed) FRANK G. OFFENLOCK,
Notary Public.

46 & 47 EXHIBIT I.

48–50 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
WISCONSIN CENTRAL RAILWAY COMPANY and Others, Defendants.

Now comes the above-named defendant, Wisconsin Central Railway Company, and answers the petition of the complainant as follows:

1. That whether the Chicago Live Stock Exchange is an association as averred in said petition, or whether live stock that is shipped

over its line of road to Chicago is owned by the members of said Exchange or by shippers whom they represent, this defendant denies any knowledge or information thereof sufficient to form a belief.

2. This defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad, and as such is subject to the act of Congress referred to in said petition.

3. It denies the allegations contained in Paragraphs III, IV, V, and VI of said petition.

Wherefore it demands that said petition be dismissed.

WISCONSIN CENTRAL RAILWAY COMPANY,
By BURTON JOHNSON, *General Freight Agent.*

STATE OF WISCONSIN, *Milwaukee County, ss:*

Burton Johnson, being duly sworn, says that he is the general freight agent of the above-named defendant, Wisconsin Central Railway Company; that he has read the foregoing answer and knows the contents thereof, and that the same is true, as he verily believes.

(Signed) BURTON JOHNSON.

Subscribed and sworn to before me this 23d day of April, A. D. 1902.

[SEAL.] (Signed) EDWARD P. SHANNON,
Notary Public, Milwaukee County, Wis.

My commission expires June 13, 1903.

51 & 52 EXHIBIT J.

53 Before the Interstate Commerce Commission.

In the matter of the complaint of the Chicago Live Stock Exchange, against the Chicago, Burlington and Quincy Railroad Company, the Hannibal and St. Joseph Railroad Company, and the Kansas City, St. Joseph and Council Bluffs Railroad Company, impleaded with the Atchison, Topeka and Santa Fe Railway Company, *et al.:*

First. These defendants severally admit that the Chicago Live Stock Exchange is an association of live stock commission men, with an office in the city of Chicago, Ill.; but deny that live stock owned by said association is shipped over the lines of the defendants' roads from any points in the West to Chicago; and they assert, on information and belief, that said association is unlawful, as being in restraint of trade, its purpose being to restrain, limit, and destroy competition, contrary to the laws of the State of Illinois and of the United States of America in this behalf.

Second. These defendants admit that they are common carriers engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Missouri, Wisconsin, Minnesota, South Dakota, Kansas, Nebraska, and Colorado, and points in the States of Illinois and Missouri, but deny that they transport any pas-

sengers or property from the State of North Dakota to points in Illinois and Missouri, as alleged in said bill of complaint.

Third. These defendants severally deny that the rate charged, collected, or received by them for the transportation of live stock in carloads from points in Iowa, Missouri, Minnesota, and Wisconsin to the city of Chicago and State of Illinois are in and of themselves and relatively compared with the rates charged by them on the product of live stock, unjust and unreasonable, and in violation of the act to regulate commerce, as is in said petition alleged.

Fourth. These defendants severally deny that the raisers or receivers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to any undue or unreasonable prejudice or disadvantage by reason of any rates charged, collected, or received by these defendants or any of them for transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof in violation of the act to regulate commerce, as is in said petition alleged.

54 Fifth. These defendants deny that the rates charged, collected, or received by these defendants or any of them for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof, or that the rates charged, collected, or received by these defendants or any of them for the transportation of live stock from said markets and intermediate points in Iowa, Missouri, Minnesota, and Wisconsin to Chicago subject the city of Chicago and the Chicago Live Stock Exchange to any undue or unreasonable prejudice or disadvantage, and deny that the same are unlawful or in violation of the act to regulate commerce; and these defendants further assert that the said Chicago Live Stock Exchange is not and has not been at any time heretofore engaged in the business of shipping live stock or the products of live stock from any of the points mentioned and could not, therefore, have any direct interest in the matters alleged.

Sixth. These defendants severally deny that the tariffs now and heretofore in force on live stock and the products thereof violate in any manner the act to regulate commerce as interpreted by this honorable Commission or otherwise in the decisions cited in said petition.

Wherefore, by reason of the matters and things set forth in the above answer these defendants pray to be hence dismissed.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
HANNIBAL AND ST. JOSEPH RAILROAD COMPANY,
KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD COMPANY,
By THOS. MILLER, *Traffic Manager.*
O. M. SPENCER,
CHESTER M. DAWES,
Solicitors.

Chicago, Ill., April 25, 1902.

55 & 56 EXHIBIT K.

57 & 58 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY, Defendant.

Now comes the Burlington, Cedar Rapids and Northern Railway Company and answers the petition of the complainant, as follows:

1. That whether the Chicago Live Stock Exchange is an association, as averred in said petition, or whether live stock that is shipped over its lines of road from points in the West to Chicago is owned by the members of said Exchange or by shippers whom they represent, this defendant denies any knowledge or information thereof sufficient to form a belief.

2. This defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad, and as such is subject to the act of Congress referred to in said petition.

3. It denies the allegations contained in Paragraphs III, IV, V, and VI of said petition.

Wherefore it demands that said petition be dismissed.

THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY CO.,
By C. J. IVES, *President.*

STATE OF IOWA, *County of Linn, ss:*

C. J. Ives, being duly sworn, says that he is the president of the above-named defendant, the Burlington, Cedar Rapids and Northern Railway Company; that he has read the foregoing answer and knows the contents thereof, and that the same is true, as he verily believes.

(Signed) C. J. IVES.

Subscribed and sworn to before me this 24th day of April, A. D. 1902.

(Signed) BEN E. MILLER,
Notary Public, Linn County, Iowa.

59 & 60 EXHIBIT L.

61 & 62 The Minneapolis and St. Louis Railroad Company,
General Freight Department.

MINNEAPOLIS, MINN., *April* 26, 1902.

DEAR SIR: Referring to your favor of April 5, inclosing complaint from the Chicago Live Stock Exchange regarding our rates on live stock, carloads, from points in Iowa and Minnesota to Chicago, I beg

to advise that this company does not own or operate any line of railroad between the Missouri River and Chicago, and is therefore not interested in the rates between those points.

As to rates from South St. Paul, and from our Iowa and Minnesota territory to Chicago, we believe that the rates are just and reasonable, both as to the rates themselves, and as compared with the rates on fresh meat and packing-house products, and are not discriminative against the city of Chicago and the Chicago Live Stock Exchange, nor unlawful, as alleged in the complaint.

Yours, truly,

(Signed) W. M. HOPKINS,
General Freight Agent.

Mr. Edw. A. Moseley, Secretary Interstate Commerce Commission, Washington, D. C.

63 & 64 EXHIBIT M.

65 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON AND SANTA FE RAILWAY, MISSOURI, KANSAS AND TEXAS RAILWAY ET AL., Respondents.

Separate Answer of the Missouri, Kansas and Texas Railway Company.

The Missouri, Kansas and Texas Railway Company, for its separate answer to the complaint herein, states:

I.

That as to whether or not the complainant is an association of live-stock commission men, raisers, owners, shippers and slaughterers of live stock, with its office in Chicago, Ill., as alleged in the complaint, this respondent has no information or belief, and calls upon the complainant for strict proof in that regard; and this respondent further states it has no information or belief as to whether the live stock owned by the Chicago Live Stock Exchange, its members or the shippers whom they represent, if any, is being constantly shipped over the lines of the defendant, carriers from all points in the West to Chicago, in the State of Illinois, as in said complaint alleged, and this respondent calls upon complainant for strict proof in that regard.

II.

This respondent admits that defendants named in said complaint are common carriers engaged in the transportation of passengers and property by railroad, as alleged, and as such are subject to the provisions of the act of Congress to regulate commerce.

III.

The respondent denies each and every other allegation in said complaint contained, and especially those contained in Paragraphs III, IV, V, and VI, so far as said allegations or any of them relate to this respondent.

(Signed) JAMES HAGERMAN,
Attorney for Missouri, Kansas and Texas R'w'y Co.

66 STATE OF MISSOURI, *City of St. Louis:*

C. Haile, being first duly sworn, upon his oath, states that he is traffic manager of the Missouri, Kansas and Texas Railway Company, one of the respondents in the above-entitled complaint, and that the matters set forth in the foregoing answer of said railway company are true, as he verily believes.

(Signed) C. HAILE.

Subscribed and sworn to before me this 29th day of April, 1902.

[SEAL.] (Signed) LUN HAGERMAN,
Notary Public.

Term expires March 22, 1904.

67 & 68 EXHIBIT N.

69 Before the Interstate Commerce Commission.

CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., Defendants.

Answer of Defendant Missouri Pacific Railway Company.

The Missouri Pacific Railway Company, one of the defendants in the above-entitled cause, comes and, for its answer to the complaint filed herein, denies that the rates charged, collected, or received by it for the transportation of live stock in carloads from points in Missouri or elsewhere to the city of Chicago, in the State of Illinois, are in themselves or relatively, compared with the rates charged by it on the products of live stock, unjust or unreasonable or in violation of section 1 of the act to regulate commerce.

This defendant also denies that the raisers of live stock in the States named in the complaint, to wit, Iowa, Missouri, Wisconsin, and Minnesota, are subjected to an undue or unreasonable prejudice or disadvantage by reason of the rates charged, collected or received by defendant for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, or South St. Paul to Chicago or points east thereof, in violation of said section 3.

Defendant further denies that the rates charged, collected, or received by defendants for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City or South St. Paul to Chicago and points east thereof, or that rates charged, collected, or received by defendant carriers for the transportation of live stock from the markets named or intermediate points in Iowa, Missouri, Wisconsin, and Minnesota to Chicago, subject the city of Chicago and the Chicago Live Stock Exchange to an undue or unreasonable prejudice or disadvantage, or that they are unlawful, or that they are in violation of section 3 of the act to regulate commerce.

And it is further denied that the defendant carriers violate the interstate-commerce act, as construed by this Commission, or at all.

And this defendant asks to be discharged, with its costs laid out and expended.

(Signed) MARTIN L. CLARDY,
Attorney for Missouri Pacific R'w'y Company.

70 STATE OF MISSOURI, *City of St. Louis:*

W. C. Stith, being duly sworn, on his oath states that he is the freight traffic manager of the Missouri Pacific Railway Company, the above-answering defendant; that he has read the above and foregoing answer, and that the facts therein stated are, to the best of his knowledge and belief, true.

(Signed) W. C. STITH.

Subscribed and sworn to before me this 28th day of April, 1902.

[SEAL.] (Signed) HENRY G. JERBEL,
Notary Public.

My commission expires September 4, 1904.

71 & 72 EXHIBIT O.

73 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY and Others, Defendants.

Answer.

Comes now the Iowa Central Railway Company, and, answering for itself only the complaint herein filed, states:

I.

It admits it is a common carrier engaged in the transportation of property and passengers between points in the States of Minnesota,

Iowa, and Illinois, and subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplemental thereto.

II.

That of the truth of no other allegations made in said complaint has this defendant such knowledge or information as justifies it in making specific affirmation or denial thereof, further than may be embraced in the facts hereinafter alleged and made specifically applicable to said complaint in behalf of this respondent.

III.

This defendant, further answering said complaint, states: That it does not own, lease, or operate any line of railway to or from any point upon the Missouri River, nor does it own, lease, or operate any line of railway to the City of Chicago, in the State of Illinois; and that it has neither made nor published any rate upon live stock, or any product thereof, from any Missouri River point to the city of Chicago.

IV.

That this defendant expressly denies that it has made or fixed any rate upon any product named in the complaint herein in violation of the said act or acts referred to in said complaint or the decision of this Commission, and distinctly disavows any intention so to do.

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V.

That there is no distinction or discrimination made by this company between the shipments of live stock destined to Chicago and the products thereof.

Wherefore, this defendant prays this complaint be dismissed as against it, and an order of this Commission so entered upon the final hearing of this cause.

IOWA CENTRAL RAILWAY COMPANY,
By GEO. W. SEEVERS, *Its General Attorney.*

STATE OF ILLINOIS, *Cook County, ss:*

I, J. N. Tittemore, being first duly sworn, say I am traffic manager of the Iowa Central Railway Company, defendant answering herein; that I have read the foregoing answer, and the matters set forth therein are true, as I verily believe.

(Signed) J. N. TITTEMORE.

Subscribed and sworn to before me, by the said J. N. Tittemore, this 6th day of November, 1902.

[SEAL.] (Signed) W. D. MILLARD,
Notary Public.

75–77 EXHIBIT P.

78 THE CHICAGO LIVE STOCK EXCHANGE
v.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY; THE RAILROAD & WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; THE ST. PAUL UNION STOCK YARDS COMPANY OF ST. PAUL, MINNESOTA; THE SOUTH ST. JOSEPH LIVE STOCK EXCHANGE; THE UNION STOCK YARDS COMPANY OF OMAHA, NEBRASKA; THE SIOUX CITY STOCK YARDS COMPANY, and THE SIOUX CITY LIVE STOCK EXCHANGE OF SIOUX CITY, IOWA, Interveners.

79 Decided January 7, 1905.

1. The complainant, an incorporated association, is entitled under section 13 of the Act to regulate commerce to bring and maintain a proceeding of this character.
2. The defendant, the Atchison, Topeka & Santa Fe Ry. Co., removed the discrimination complained of as to its lines, and it appeared that the defendant, the St. Louis & San Francisco Railroad Co., does not participate in the rates in question. Complaint as to those lines dismissed.
3. Defendants exact higher rates for transporting cattle and hogs than for transporting live-stock products to Chicago from points west, northwest and southwest thereof, including Missouri River po-nts and South St. Paul, Minn. Upon all the facts and circumstances, *Held:*

   1. That such discrimination is not justified by difference in cost of transportation or otherwise, and subjects the traffic in cattle and hogs at Chicago and other points, and those interested therein, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of hogs and cattle, and to shippers and localities interested in such traffic, undue and unreasonable preference and advantage, in

violation of the Act to regulate commerce. Chicago Board of Trade *v.* C. & A. R. Co. (4 I. C. C. Rep. 158), reaffirmed and the principle therein announced extended to the transportation of cattle and their products.

2. That the desire of a carrier to secure additional business for its line of road does not justify a change in the relation of rates resulting in a higher rate upon cattle and hogs, the raw material, than upon live-stock product, the manufactured article, where, as in this case, the articles are in sharp competition with each other in markets of purchase and sale, where it appears that upon other lines and in other sections rates are generally no higher, and in many instances much lower, on the traffic prejudiced than on that favored by the change, and where numerous and important industries, which have been built up and maintained under the former adjustment, and those interested in such industries, will be injuriously affected by the action taken.

S. H. Cowan and T. W. Tomlinson for complainant.
A. B. Stickney and F. B. Kellogg for C. G. W. Ry. Co.
W. B. Biddle for A., T. & S. F. Ry. Co.
Thomas Wilson for C., St. P., M. & O. Ry. Co.
Wm. Brown and F. A. Wann for C. & A. Ry. Co.
Thomas Miller and O. M. Spencer for the Burlington Lines.
Geo. R. Peck and Burton Hansom for C., M. & St. P. Ry. Co.
W. T. Rankin for C., R. I. & P. Ry. Co.
R. A. Jackson for C., R. I. & P. Ry. Co. and B., C. R. & N. Ry. Co.
80 S. F. Andrews for I. C. R. R. Co.
T. N. Gill for W. C. Ry. Co.
C. N. Travous for Wabash R. R. Co.
Ira B. Mills and C. F. Staples for the R. R. & W. Com. of Minn.
Milchrist & Scott for Sioux City Stock Yards Co., and Sioux City Live Stock Exchange.
F. T. Ransom for Union Stock Yards Co. of Omaha.
M. D. Flower for St. Paul Union Stock Yards Co.
Horace Wood for South St. Joseph Live Stock Exchange.

Report and Opinion of the Commission.

FIFER, *Commissioner:*

The subject-matter of the complaint in this case is the rates exacted by defendants for transporting live stock and its products in carloads to Chicago from points west, northwest and southwest thereof, including South St. Paul, Minn., and points on the Missouri River, Sioux City, Iowa, to Kansas City, Mo., inclusive. Complainant alleges that the live-stock rates are unreasonable *per se*, and relatively unreasonable compared with rates applied on the products; that defendants' adjustments of rates between live stock and its products subject complainant, the locality of Chicago and producers of live stock in the states of Iowa, Missouri, Wisconsin

and Minnesota to undue and unreasonable prejudice and disadvantage; and that by reason of the premises defendants are violating sections 1 and 3 of the Act to regulate commerce. Complainant also alleges that said adjustments are in violation of the rulings of this Commission in Chicago Board of Trade *v.* Chicago & Alton R. Co. *et al.*, 4 I. C. C. Rep. 158, and Squire & Co. *v.* Michigan Central R. Co. *et al.*, 4 I. C. C. Rep 611.

In their answers, defendants, generally, deny the alleged violations of law. The St. Louis & San Francisco Railroad Company denies participation in the live-stock rates complained of; the Wabash Railroad Company denies complainant's right to institute this
81 proceeding; and some of the other defendants allege that complainant is an unlawful association, its purpose being to restrain, limit and destroy competition in trade.

The interveners deny that the adjustments of rates complained of, so far as they apply to live stock, as between Chicago on the one hand and the localities represented by the interveners respectively on the other, subject complainant, the locality of Chicago or producers of live stock in the states of Iowa, Missouri, Wisconsin and Minnesota to undue and unreasonable prejudice or disadvantage.

Facts deemed material to a determination of the questions thus presented, to the extent that we think it expedient to pass upon them at this time, are found as follows:

Findings of Fact.

Complainant is an incorporated association. Its principal office and place of business are at Chicago, Illinois. Its members are engaged in the purchase, shipment and sale of live stock for themselves and upon commission. Some of them own large farms in the territory under consideration where they raise live stock for the market, while others are interested as packers in the products of live stock. The purposes for which complainant was organized, as stated in its charter, are: "To establish and maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of live stock, as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthy meats; and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits."

Apparently, the St. Louis & San Francisco Railroad Company does not participate in the live-stock rates, and for this reason that company will not be included in the statements hereinafter made.

The other defendants, according as their various lines or routes may run, are engaged as common carriers of interstate traffic, including live stock and its products, between different points
82 in the territory described. They all reach Chicago and one point or more on the Missouri River, either directly or in

connection with other lines, but only a few of them are directly interested in the traffic carried between Chicago and South St. Paul. Some of them own lines which run westerly, northwesterly and southwesterly from the Missouri River.

Chicago is now and for many years has been the largest live-stock market in the United States; but during recent years packing houses have been erected and important live-stock markets built up at South St. Paul, Minn., Sioux City, Iowa, South Omaha, Neb., South St. Joseph and Kansas City, Mo., and at other points on the Missouri River. There are also many packing houses and live-stock markets of importance at different points in the territory lying between Chicago and the Missouri River. To a very large extent all these markets receive their supply of live stock from the same territory; that is to say, from points in states west of Chicago and east of the Rocky Mountains. An important portion of the products is shipped by way of Chicago and the Atlantic Seaboard to foreign countries and large shipments are also made by way of Chicago to consuming markets in the eastern part of the United States. Under these circumstances, the importance of establishing and enforcing rates for the transportation of live stock and its products that are relatively just and reasonable will be readily observed. The higher the rate on the live stock compared with the rate on the products the greater the difficulty of moving the former and the more freely the latter will move, over long distances. To illustrate: Other things being equal, if Chicago, compared with Kansas City, is 100 miles nearer the consuming market but 100 miles farther from the point where the live stock is raised, whether or not the live stock will be slaughtered at Chicago will depend largely upon whether or not the rate on the live stock to Chicago plus the rate on the products from Chicago to the consuming market is more than the rate on the live stock to Kansas City plus the rate on the products from Kansas City to the consuming market.

Efforts to buy and sell in common territory, made by parties located and doing business at different points outside of
83 that territory is called market competition; but market competition, so far as it relates to rates of transportation, can be made effective only through the instrumentality of common carriers. It often happens that the interests of carriers serving the same territory are in conflict, and under such circumstances, one carrier will sometimes make a rate on a particular kind of traffic that will result in considerable injury to persons and localities interested in another kind of traffic, and also to competing carriers, and, apparently, this is what has happened in the present case.

Live stock and its products are in sharp competition with each other in the different markets, and some of the defendants are more interested in the former than in the latter and *vice versa*.

Those whose lines reach Chicago and also run through live-stock districts in states west, northwest and southwest of the Missouri River desire the long haul they will obtain if the live stock is shipped to Chicago, while those whose lines terminate at the river wish the live stock to be slaughtered there, because this will

give them an opportunity to participate in hauling the products. And this conflict of interest appears to be largely responsible for the adjustment of rates complained of.

Aside from the rates in question, carriers generally make rates on live stock somewhat, and in many cases considerably, lower than on the products. This was formerly true concerning rates made by carriers operating between the Missouri River and Chicago; but soon after the large packers erected packing houses at different points on the Missouri River changes began to take place. The tonnage controlled by the packers was comparatively large, and this fact enabled them to obtain secret concessions from individual carriers. These concessions, being discovered by other interested carriers, were followed by open reductions in the published rates applied on the products. As corresponding reductions were not made in the live-stock rates the relation formerly existing between live stock and its products became changed. The rate on packing house products from Missouri River points to Chicago was finally made 5 cents per 100 pounds less than on live hogs; whereupon, complaint was filed with this Commission, which led
84 to an investigation that was followed by the decision in the Chicago Board of Trade case *supra*. The rates complained of in that case pertained to transportation to Chicago from Missouri River points and points in the states of Iowa and Missouri intermediate between the Missouri River and Chicago. The Commission found that the cost to the defendants of transporting live hogs was not greater than the cost of transporting packing house products; held that under the circumstances disclosed by the record the discrimination against the former traffic was unlawful, and issued an order requiring the defendants to cease and desist from exacting higher rates for transporting live hogs than for transporting packing house products from said shipping points to Chicago. This order was issued on November 3, 1890, and was complied with by the defendants on January 1, 1891.

The subject-matter of the complaint in the Squire & Co. case *supra* was the rates exacted by the defendants for transporting cattle and hogs and their products from Chicago to Boston and other eastern points. After stating that live stock and its products were bought and sold in competition with each other in the markets and relating the circumstances surrounding their transportation the Commission held that the different rates should be based upon cost of carriage, but as the record did not contain data from which such cost could be ascertained no order was made.

The interests of carriers operating lines running easterly from the Missouri River are such that the rates from the different points on the river to Chicago and other eastern destinations are usually the same on the same kind of traffic. A reduction made by a carrier at one point is ordinarily followed by corresponding reductions made by interested carriers at the other points. This is of course necessary to prevent a diversion of the traffic.

The distance from St. Paul to Chicago is about 400 miles and the average distance from the Missouri River points to Chicago is about 500 miles.

The rate from St. Paul to Chicago in each instance is about 80 per cent. of the rate to Chicago from Missouri River points, and carriers serving St. Paul endeavor to maintain this relation;
85 but a reduction made in a rate from St. Paul might or might not be followed by a corresponding reduction from the Missouri River.

Although sheep are properly included in the term "live stock," practically no evidence was adduced concerning them or their transportation, and the parties to this proceeding ignored them almost entirely in their briefs and oral arguments; consequently, the term live stock as used herein is intended to cover only cattle and hogs.

The local rate from the Missouri River to Chicago is ordinarily made the maximum on shipments to Chicago from points intermediate between Chicago and the river and is applied to all points in a territory ranging from 100 to 150 miles in width and lying immediately east of the river. The rates to Chicago from points east of said territory are somewhat less and are graded with some regard to distance. What has been said about local rates on live stock to Chicago from the river and the intermediate points applies also to the local rates on the products; and a like method obtains in making rates on live stock and its products to Chicago from South St. Paul and points intermediate between those places.

Rates on live stock and its products to Chicago from Missouri River points and South St. Paul have ranged as follows: At the time the order referred to was complied with the rate from the river on live hogs and packing house products was made 22 cents per 100 pounds. The rate from the river on cattle was then 23½ cents, except that from Sioux City it was 25 cents; and these relations continued, with one unimportant exception, until December 1, 1894. At the latter date the rates were made the same on cattle and hogs and their products; namely, 23½ cents, except that the rate from Sioux City on cattle was not changed; and this adjustment was adhered to, except for short periods, until January 1, 1902. Between December 1, 1894, and January 1, 1902, except, possibly, for short periods, rates from South St. Paul were: On cattle 25 cents, on hogs 27, on packing house products 18½, and on fresh and dressed meats 20. On January 1, 1902, a rate of 18½ cents, called a proportional rate, was established and put in force from the river on live-stock pro-
86 ducts destined to points east of the Indiana-Illinois state line, but no other changes were made, either from the river or from South St. Paul. This adjustment continued until April 14, 1902, but meanwhile and on April 5 the complaint in this case was filed.

The first hearing was held at Chicago on May 15, 1902. At that time an officer of the Chicago, Milwaukee & St. Paul Company, speaking for his company and also for the other defendants, made a motion for an adjournment until some time in the month of July, and in support of the motion said: "It is the policy and the general practice of western roads to make their rates from the west and northwest to Chicago arbitrarily, regardless of destination. It is not obligatory. They do it when they can. Certain conditions have arisen

which have made it necessary to depart in some respects from that policy, but those conditions will doubtless end with the 30th day of June next, and it is believed that thereafter the revision of the rates on live stock and live-stock products will be satisfactory to all persons interested; and for this reason we ask for a postponement." He further stated that it was the intention of the defendants to make such adjustments as would accord with the order hereinbefore referred to. Upon this representation the hearing was adjourned until June 16, 1902, and it was afterwards postponed until the 6th day of the following November.

After the complaint was filed changes were made in the rates as follows: On April 14, 1902, a proportional rate of 18½ cents was put in force from the river on live stock either originating at points west of the river or destined to points east of the Indiana-Illinois state line, leaving the local rate to Chicago still 23½ cents. On August 8, 1902, pursuant to a contract entered into between the Chicago Great Western Company on the one hand and all packers doing business at the Missouri River points on the other, that company established and put in force from Kansas City and St. Joseph on the products of live stock a rate of 20 cents on traffic destined to Chicago and a rate of 18½ cents on traffic destined to points east of the Indiana-Illinois state line. The contract provided that these rates should remain in force seven years, in consideration
87 whereof the packers agreed to deliver to the Chicago Great Western a certain percentage of their traffic in the products, or, upon failure to do so, pay it each month, by way of liquidated damages, an agreed amount for each car short. The action of the Chicago Great Western was followed by other interested carriers and corresponding rates were put in force from the other Missouri River points, while rates from South St. Paul were put in force as follows: On packing house products, 15 7/10 cents when destined to Chicago and 14 6/10 when destined to points east of the Indiana-Illinois state line; and on fresh and dressed meats, 17 cents when destined to Chicago and 15 7/10 when destined to points east of the Indiana-Illinois state line. On August 11, 1902, the Atchison, Topeka & Santa Fe Company made a 12-cent rate to Chicago from Kansas City and intermediate points on live stock, and other carriers followed this action to the extent of making a 12-cent proportional rate from the river on live stock originating at points west of the river. On January 1, 1903, the Atchison Company cancelled the 12-cent rate and made a rate of 18½ cents to take its place. This action was followed by the other carriers to the extent of canceling the 12-cent proportional rate and making a proportional rate of 18½ cents to take its place. On March 1, 1903, the Atchison Company put in the place of its 18½-cent rate a rate of 20 cents and made a proportional rate from the river on live stock destined to points east of the Indiana-Illinois state line of 18½ cents; whereupon the other carriers substituted for their 18½-cent proportional rate a proportional rate of 20 cents and made another proportional rate from the river on live stock destined to points east of the Indiana-Illinois state line of 18½ cents.

Since the latter date no changes in the rates have been made. It will thus be seen that the expectations of defendants, as voiced by the officer of the Chicago, Milwaukee & St. Paul Company at the hearing on May 15, 1902, have not been realized, and the disparities in the rates are greater now than they were at that time. The Atchison Company is the only one of the defendants that is complying with the order in the Chicago Board of Trade case, hereinbefore mentioned. That company exacts from Missouri River points
88 the same local rate and the same proportional rate on live stock that it exacts on the products of live stock, and makes the local rate, namely 20 cents, the maximum from the intermediate points. On the other hand, while the other defendants operating between the Missouri River and Chicago follow the Atchison Company rates so far as the rates on the products and the proportional rate on the live stock are concerned, they exact from the river on live stock a local rate of 23½ cents and make that rate the maximum from the intermediate points; that is to say, the local rate they exact from the river, and which is made the basis of rates from the intermediate points, is 3½ cents per 100 pounds more on live stock than on the products of live stock. And the defendants that carry live stock and its products to Chicago from South St. Paul and points intermediate between those places charge rates for the transportation that are very much higher on the former traffic than on the latter.

Since all, or nearly all, the live stock carried easterly from the Missouri River is shipped there in the first instance from other points, practically no shipments are made from the river to Chicago upon the local rates in force between those points, and such rates are therefore important, principally, because of their effect upon rates from the intermediate points.

At the hearing on November 6, 1902, on motion of complainant, the complaint in this case, so far as it related to the Atchison, Topeka & Santa Fe Railway Company, was dismissed.

As applied to the other defendants that operate between the Missouri River and Chicago, it is substantially accurate to say that the matters advanced by them in justification of the discrimination complained of, are as follows: The Chicago Great Western contends that the discrimination is justified, first, by difference to the carriers in the cost of transportation, and second, by competition created by the packers, as hereinbefore described. The other defendants rely for their justification upon the competition created by the Chicago Great Western Company in making said contract and publishing and enforcing rates in accordance with its provisions.

Matters advanced in justification by the defendants that op-
89 erate between South St. Paul and Chicago, as will be hereinafter explained, are somewhat different.

Generally speaking, the live stock is carried in cars owned by the carriers, while the products are carried in refrigerator cars owned by the packers. The refrigerator cars are nearly always returned empty to the shipping points, while 20 per cent. or more of the live-stock cars are returned loaded.

The carriers pay the packers for the use of the refrigerator cars 1

cent per mile for each mile the cars are transported, and make settlements among themselves at the rate of 6 mills per mile for the use of the live-stock cars. The former cars are much more expensive to build than the latter.

Evidence concerning weights of the cars used and the revenue-paying and other traffic carried in them was very conflicting, but we think fair averages would be about as follows:

Packing House Products.

Car	36,000	pounds.
Revenue-paying load	28,000	"
Ice and other preservatives	3,000	"
Car, on return trip	36,000	"
Total weight carried for revenue received	103,000	"
Revenue on 28,000 pounds at 20 cents per 100	$56.00	
Less mileage from and to point of shipment	10.00	
Net revenue received	$46.00	

Revenue per 100 on total weight hauled, 4 cents and about 5 mills.

Fresh and Dressed Meats.

Car	36,000	pounds.
Revenue-paying load	21,000	"
Ice and other preservatives	4,000	"
Car, on return trip	36,000	"
Total weight carried for revenue received	97,000	"
Revenue on 21,000 pounds at 20 cents per 100	$42.00	
Less mileage from and to point of shipment	10.00	
Net revenue received	$32.00	

Revenue per 100 on total weight hauled, 3 cents and about 3 mills.

90 Cattle.

Car	26,500	pounds.
Revenue-paying load	22,000	"
Bedding, manure, etc.	2,000	"
Car, on return trip	26,500	"
Total weight carried for revenue received	77,000	"
Revenue on 22,000 pounds at 20 cents per 100	$44.00	
Less mileage from and to point of shipment	6.00	
Net revenue received	$38.00	

Revenue per 100 on total weight hauled, 4 cents and a little more than 9 mills.

Hogs.

Car	26,500	pounds.
Revenue-paying load	17,000	"
Bedding, manure, etc.	2,000	"
Car, on return trip	26,500	"
Total weight carried for revenue received	72,000	"
Revenue on 17,000 pounds at 20 cents per 100	$34.00	
Less mileage from and to point of shipment	6.00	
Net revenue received	$28.00	

Revenue per 100 on total weight hauled, 3 cents and about 9 mills.

If there should be a scarcity of cars the weights of the revenue-paying loads above stated would be somewhat increased, and we think the increases pertaining to packing house products and fresh and dressed meats would be greater than those pertaining to either cattle or hogs; but on account of the mileage received by them the packers do not, ordinarily, load very much in excess of the minimums required by the carriers, which are: On packing house products, 26,000 pounds; and on fresh and dressed meats, 20,000. The minimums pertaining to live stock vary according to the kind of live stock shipped and the length of the car used in each instance.

The length of the car most generally used is 33 feet and 9
91 inches, and minimums pertaining to such a car are: On cattle, 22,000 pounds; and on hogs, double-deck, 22,000, and single-deck 17,000.

Further variations in the above comparisons might result from differences in incidental expenses pertaining to the different classes of traffic at terminals and while en route.

Packing house products and fresh dressed meats are loaded and unloaded by the shippers. Live stock is nearly always loaded at the intermediate points by the shippers, without expense to the carriers, but the president of the Chicago Great Western stated that the carrier pays the stock yards company, in each instance, for loading, a fee which ranges from 25 cents to $1.50 per car. No explanation of the wide range in expense thus indicated was made, and a similar claim as regards expense was not made by any of the other defendants. The carriers pay the expense of unloading at Chicago, which is 25 cents per car, but this is included in a terminal charge of $2 per car, which is exacted on live stock, in addition to the transportation charges above specified.

Trains carrying packing house products or fresh or dressed meats are stopped at different points en route to afford an opportunity for re-icing the cars, but the re-icing is done at the expense of the shippers. On the other hand, the carriers bear the expense of spraying hogs while in transit during hot weather, and the expense of clean-

ing the live-stock cars, the amount of which has not been definitely shown, is also borne by the carriers.

Evidence concerning risk assumed by the carriers in transporting the different kinds of traffic was very conflicting, but the damages paid are such a small percentage of the revenue received that they are not a very important factor.

At many of their local stations the defendants furnish stock yards to accommodate shipments of live stock, but from the record it is impossible to say how much, if any, greater the expense of terminal facilities thus furnished is than the expense of terminal facilities furnished for shipments of live-stock products. In connection with some of these cattle yards defendants provide weighing facilities.

For the purpose of explaining more fully the matter of terminal expenses we quote from the testimony of an officer of the
92 Chicago, Burlington & Quincy Company as follows: "Terminal charges on packing house product and live stock, viz., loading and unloading charges, switching charges paid other lines, etc., are difficult of comparison; they stand in different relation at different terminal points and the comparison would not be the same in the case of any two carriers because their means of access to the place of loading and unloading are seldom the same at any one point, nor is their relative situation the same at any two points. For illustration, this company reaches the Kansas City Stock Yards with its own rails and therefore does not pay any switching charge on live stock, but is obliged to pay $3 per car switching on packing house product shipped from the same point. At St. Joseph we pay a switching charge of $1 per car on live stock, while the Chicago Great Western Railway pays a total of $4 per car. We pay $1.50 per car on packing house products shipped from St. Joseph, while the Chicago Great Western Railway pays a total of $4.50 per car. At Chicago we pay a switching charge of $3.50 per car on packing house product delivered at the Union Stock Yards, which charge includes return of the empty car to our tracks. We pay from $2 to $5 per car for switching service on packing house product delivered on other lines in the City of Chicago; on live stock delivered at the Union Stock Yards we charge $2 per car in addition to the regular tariff rate and pay for trackage and unloading $1.75 per car, which does not include the cost of our own switching service. There is no difference in the practice of the several lines who deliver live stock and packing house product at Chicago and Union Stock Yards from western points."

We understand that delivery in Chicago when that point is the final destination is nearly always at the Union Stock Yards, if the traffic is live stock; also, that a large portion of the products is delivered there. But while the defendants exact a terminal charge of $2 per car for such delivery of live stock, they exact no terminal charge whatever for such delivery of live-stock products, if the traffic is shipped from a point west of Joliet, Ill. The latter point is located a short distance southwesterly of Chicago.

The freight traffic manager of the Atchison Company, tes-
93 tifying as to the effect of terminal and other charges paid and absorbed by his company, said: "My view is that the

rate on the product should be higher than the rate on the raw material. The rate of 12 cents per hundred pounds on live stock from the Missouri River to Chicago pays the Atchison road as much in gross for transporting a carload of live stock as the 18½-cent rate pays us for transporting a carload of fresh meat. By gross revenue I mean the charges we collect and retain after paying the terminal charges, switching charges, mileage, etc."

Defendants pass men free, who accompany and care for cattle and hogs while in transit, as follows: One man one way in charge of one car; one man each way in charge of two to five cars; two men each way in charge of six to ten cars; and three men each way in charge of eleven or more cars. Returning, these men ride on defendants' passenger trains.

Speed and tonnage of trains appear to be practically the same whether the traffic carried is live stock or the products of live stock. In each instance the tonnage offered is large and shipments are regularly and continuously made; and in these respects there is apparently no appreciable difference between the two classes of traffic.

Weights of products of cattle and hogs are percentages of weights of the live animals as follows: Hogs, meat products about 72 per cent., total products, including offal, fertilizer, hair, etc., about 82 per cent.; cattle, meat products, 45 to 60 per cent., total products about 67 per cent.

The value of the products of cattle and hogs, pound for pound, is about twice that of the live animals.

Although defendants do not exact higher rates per 100 pounds for transportation to Chicago from intermediate points between the Missouri River and Chicago than to the same destination from the river, nor claim a right to do so, some of them contend that as the bulk of the live-stock shipments are from the intermediate points while the shipments of the products are more largely from the river and the latter traffic is often carried in full train loads from the river while the former traffic, when shipped from the intermediate points, is what might be called pick-up business, the cost of transporting the live stock is greater than the cost of transporting the live stock
94 products. This statement is true to the extent that the more switching done and the greater the number of stops made by a train the more expensive to the carrier the transportation service is, and more switching and stops are necessary when the shipments are from the intermediate points than when they are from the river. But the difference in cost thus indicated appears to be offset in the present case by the greater rate per ton per mile received by defendants on shipments from the intermediate points. As before stated, the rate is the same to Chicago from intermediate points in a territory ranging from 100 to 150 miles in width and situated just east of the river as from the river. The only one of defendants' operating officials who gave testimony on this point was the general manager of the Chicago, Burlington & Quincy Company, and he made replies as indicated below to questions concerning this matter.

Q. On the basis of the same rate on both live stock and the product, which would you consider the more remunerative traffic

from a railroad standpoint, a train of fresh meat or packing house products from the Missouri River destined to Chicago, or a train of live stock picked up at main line stations east of the Missouri River?

A. That is a pretty difficult question to answer and I should think it was largely a matter of opinion, which would be arrived at by studying the ordinary conditions of handling the business. My judgment would be that the train of live stock would be the more remunerative of these two, although the difference might not be so very great. My reason for that is that while there are a good many expenses incident to the handling of live stock from local stations, the picking up of live stock on a division and gathering it into a train at a division point is not quite as expensive as hauling a train of the full size over the entire division. The cost per ton or per car is greater, but the total cost is not greater. The conditions in handling live stock, although they are pretty severe and pretty difficult to meet, have never been quite as severe or quite as difficult to meet as the conditions in hauling the dressed products.

Q. Make the same comparison between a train of live stock
95 from the Missouri River compared with a train of live stock picked up east of the Missouri River, at the same rate.

A. I should say that the train picked up at stations east of the Missouri River, assuming that the business was moving eastward, would be more remunerative than a solid train of the same number of cars and same weight picked up at the Missouri River terminal.

Packing house products and fresh and dressed meats include almost the entire products of live stock.

Carriers usually make lower rates on raw material than on its products, and all the railroad officials who testified in this case on that point, except the president of the Chicago Great Western Company, said that under normal conditions they believed the rates on live stock should not be higher, while some of them stated that in their opinion they should be lower, than on the products of live stock.

The president of the Chicago Great Western Company stated that his company entered into the aforesaid contract for the purpose of securing a greater proportion of the traffic in the products of live stock than it had previously been able to obtain.

In justification of the discrimination complained of, defendants operating between South St. Paul and Chicago, in addition to matters advanced in justification by the other defendants as above specified, contend that if live-stock rates to Chicago from points in the state of Minnesota are reduced the Railroad & Warehouse Commission of that state will reduce rates on live stock from such Minnesota points to South St. Paul.

Under the laws of the State of Minnesota the Commission referred to has power, subject to revision by courts of competent jurisdiction, after complaint made and investigation duly had to substitute for rates established by common carriers doing business in that state, for the transportation of passengers or property therein, rate established by the Commission, if it determines that the rates established by the carriers are unequal or unreasonable.

The present adjustment of rates on live stock to Chicago as com-

pared with South St. Paul, from the Minnesota points in
96 question, was the result of conferences between said Commission and officials of the interested carriers.

After the complaint in this case was filed the Minnesota Commission notified the defendants referred to above as operating between Chicago and South St. Paul that if the rates on live stock from Minnesota points to Chicago were reduced the Commission would make corresponding reductions in the rates on live stock from such Minnesota points to South St. Paul.

Complainant introduced considerable evidence which showed that Chicago as compared with South St. Paul and the Missouri River markets has received a smaller proportion during recent years than prior thereto of the live stock raised in the territory under consideration, and claimed that this tended to show that the discrimination complained of has injured the Chicago live-stock market and those interested therein.

On the other hand, defendants showed that during recent years great improvements have been made in the facilities for handling live stock at South St. Paul and the Missouri River markets, including the erection of new packing houses and additions to old ones; that there has been a greater increase in the amount of live stock raised west of the river than east of it; and that live stock shipped from the river to Chicago shrinks in weight from 3 to 5 per cent. while in transit; and claimed that these facts and others that are similar fully account for changes shown in the destinations of live-stock shipments.

That the facts shown would tend to produce the effect claimed for them is evident, but in that connection it is impossible to determine to what extent each of the facts was effective.

Complainant also introduced considerable evidence tending to show that the rates exacted by defendants for transporting live stock to Chicago from points in the states of Iowa, Missouri, Wisconsin and Minnesota are unreasonable *per se*, but the testimony upon that point is unsatisfactory and we do not feel justified in making a finding in relation thereto.

Based upon the foregoing, we make specific findings as follows:

The discrimination against the transportation of live stock to Chicago from the shipping points in question, brought about by
97 defendants' action in establishing and putting in force upon the products of live stock rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock between the same points injured the live-stock market of Chicago and those interested therein, is not justified by difference to defendants in the cost of transportation, and is not otherwise justified, and therefore subjects the traffic in live stock and the Chicago live-stock market and those interested therein, including complainant, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage.

Conclusions.

Complainant is an incorporated association whose members are engaged in the purchase, shipment and sale of live stock, and whether or not a purpose of its organization is, as some of the defendants have alleged, to restrain, limit and destroy competition in trade, it had a right under section 13 of the Act to regulate commerce to institute and maintain this proceeding.

Cattle Raisers' Association of Texas *v.* Fort Worth & Denver City Railway Company *et al.*, 7 I. C. C. Rep. 513.

The jurisdiction of the Commission over the defendants is not denied.

In the Chicago Board of Trade case hereinbefore mentioned the Commission, after stating the circumstances and conditions surrounding the transportation of live hogs and the products of hogs, including the competitive relations existing between these two kinds of traffic, and the cost of transportation, held that the greater charge exacted by the defendants for transporting the former was unlawful, and issued an order requiring the defendants to cease and desist from charging more per 100 pounds for transporting live hogs than for transporting the products of hogs. The territory there in question was substantially the same as that now under consideration, and, as shown in the findings of fact, essential conditions have not changed materially since. It follows, therefore, that if the order referred to was right when issued the discrimination complained of, so
98 far as it relates to the transportation of hogs and their products to Chicago from the river and points intermediate between the river and Chicago, is unlawful. And if it is unlawful to exact a higher rate on hogs than on their products it is unlawful to charge more for transporting cattle than for transporting the products of cattle, because the relation between the live animal and its products is substantially the same in each case, and, at the same rate, the net revenue per 100 pounds received by defendants for transporting cattle is greater than the net revenue on equal tonnage received by them for transporting hogs.

Packing house products and fresh and dressed meats include almost the entire products of live stock, and although at the same rate per 100 pounds the traffic in packing house products pays, above cost of transportation, a greater revenue than the traffic in either fresh or dressed meats, defendants make no difference in their rates on that account. They also charge the same rates for transporting cattle that they exact for transporting hogs.

If cattle and hogs are considered together on the one hand and packing house products and fresh and dressed meats on the other it will be seen that after deducting mileage according to payments made by defendants the revenue received by them compared with the paying and non-paying tonnage hauled is greater at the same rate on live stock than on the products of live stock. But expenses incidental to the transportation do not apply equally to the different classes of traffic.

Although the products of live stock are shipped to some extent from packing houses located at some of the intermediate points and the local rate from the river is made the maximum for such shipments, generally speaking, the local rates in question apply to live stock shipped from the intermediate points and products of live stock shipped from Missouri River points and South St. Paul, because the bulk of the live-stock shipments in question is from the intermediate points while shipments of the products are largely from the river and South St. Paul.

At intermediate stations where the tonnage of live stock shipped is considerable defendants provide, for the accommodation of this traffic, cattle yards, and, in many instances, weighing
99 facilities. This is an expense that does not apply to shipments of the products; but, on the other hand, the switching and terminal charges paid on the products at Missouri River points and absorbed by defendants, although not definitely shown, are large, and fully sufficient, we think, to offset terminal expenses on live stock at the intermediate shipping points.

Apparently, the switching and terminal charges paid by defendants at Chicago, when that point is the final destination, are the same whether the traffic is live stock or the products of live stock, except that defendants pay 25 cents per car for unloading the live stock and also pay for cleaning the live-stock cars, and we understand that nearly all the former traffic and a large portion of the latter is delivered at the Union Stock Yards; but while defendants exact a terminal charge of $2 per car for such delivery of live stock they make no terminal charge whatever for such delivery of live-stock products when the shipments are from points west of Joliet, Ill. The latter point is located a short distance south-westerly of Chicago.

Another expense incidental to the transportation of live stock that does not apply to the products is that connected with the transportation of men who accompany the live-stock shipments. Such transportation subjects defendants to some additional risk, but we think this risk is about the only expense connected with the transportation of the men that should be considered in connection with the transportation of the live stock. These men take care of the stock while in transit and thus relieve defendants of duties they would otherwise have to perform, and the carriage of the men free is incidental to, and cannot be considered separately from, the transportation of the live stock. But whatever the expense to defendants thus caused may be, we are convinced that it is offset, and more than offset, by the fact that 20 per cent. or more of the live-stock cars are returned to the shipping points loaded, while refrigerator cars are nearly always returned empty.

There are a few other differences in cost of transportation, but they are not very important and have been fully explained in the findings of fact; we do not deem it necessary, therefore, to notice them here in detail.

100 After a careful consideration of all matters disclosed by the record we conclude that the discrimination complained of is not justified by difference to defendants in the cost of transportation.

And this was the view expressed by some of defendants' officials. The freight traffic manager of the Atchison Company, as hereinbefore stated, testified that from the Missouri River to Chicago a 12-cent rate on live stock is as profitable as a rate of 18½ cents on fresh meat. But this might be true when applied to transportation by the Atchison Company although not true when applied to transportation by some of the other defendants. What are called "out-of-pocket" expenses, which are paid by the defendants and because of which no charges in addition to the regular rates of transportation are exacted from shippers, vary according to the variations in location of defendants' respective lines of railway.

In making calculations concerning cost of transportation we have endeavored to describe the general situation and have not attempted to give in detail the differences that exist between the different lines operating in the territory under consideration; first, because it would be impossible to state such differences accurately, and, second, because although we think cost of transportation is a very important element we do not consider it a controlling element in this case.

In determining what the relation should be between the rates charged for transporting two different freight articles value is often an important factor; but this is not alone because of the greater risk connected with the transportation of the more valuable article. Improvements made during recent years in the road-beds and equipment of carriers have rendered the item of risk in many cases of little consequence. The value of the article is important, principally, because of its bearing upon the value to the shipper of the transportation service; and the value of the service is, and has always been considered by carriers, one of the important elements to be considered when fixing the rates to be charged for transportation. As stated in the findings of fact, live-stock products, compared with the live animals, are about twice as valuable.

Another very important factor is the relation existing be-
101 tween the articles transported. If the relation is remote, such as that between flour and silk, a change of a few cents per hundred pounds in the rates charged for transporting one of them may not affect traffic in the other; but if the relation is close, such as that between raw material on the one hand and goods manufactured from that material on the other, a slight change in the adjustment of transportation charges between the two articles may be sufficient to close manufacturing plants at some points and increase the output of plants located elsewhere. And it is because of this difference that some discriminations made by carriers are justifiable under certain circumstances.

The competition between live stock and the products of live stock is very severe both in the markets of purchase and in the markets of sale, and live stock raised in the vicinity of the Missouri River is now and for many years has been transported to and slaughtered at different points in territory lying between that river and the Atlantic Seaboard. Packing houses at these different points have been established and maintained under rates of transportation which, generally speaking, have not been higher, while in many instances they

have been lower, on the live stock than on the products; and the principle governing this adjustment, namely, that the rates on raw material shall not be greater than on the products of the material, has been applied in nearly all other cases of a similar nature. It is therefore apparent that if the matters of defense advanced in this case are held to justify the discrimination complained of many other discriminations of a like nature may result.

But some of the defendants contend that it is natural and therefore proper for live stock to be slaughtered at or near the points where it is raised. They say that if this is done shrinkages in weights and other waste that would otherwise result will be avoided.

The record shows that live stock shrinks some in weight while in transit, and this is naturally an advantage to the near-by market and one to which it is entitled, but such natural advantage does not justify a discrimination in rates in favor of the near-by market which would otherwise be unlawful. The record also shows that it
102 is practicable to transport live stock long distances and that this has been done continuously for many years. Commissioner Bragg, in delivering the opinion of the Commission in the Chicago Board of Trade Case, *supra,* referring to the live-stock business, said: "A business like that, involving the preparation for and consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it, is too large to be done in a corner." We think this dictum was true at the time the decision in that case was rendered and is true now, and that the relations of rates on these highly competitive kinds of traffic should not be adjusted with reference to the interests of any particular market or markets. Rates relatively just and reasonable should be established, regardless of results that may ensue, and the live stock should be allowed to go wherever it will under such circumstances.

Several of defendants' officers gave testimony concerning the relation that should exist between the rates on live stock and its products, and, with the exception of the president of the Chicago Great Western Company, expressed the opinion that, as a general proposition, the rates on the former traffic should not be higher than on the latter, while some of them said the rates on the manufactured product should be higher than on the raw material. But they stated that the rates on live-stock products, provided for in the contract aforesaid, are unreasonably low; that they had no voice in making such rates, but were compelled to accept them in order to secure a fair share of the traffic; that the carriers represented by them respectively would suffer great loss if compelled to establish corresponding rates on live stock; and that, therefore, they believed the discrimination complained of, so far as it relates to such carriers, is justifiable. The president of the Chicago Great Western stated that his company entered into the contract for the purpose of securing more of the traffic in the live-stock products than it had previously been able to obtain. It is therefore evident that, as regards responsibility for the discrimination under consideration, the position of the Chicago Great Western Company is somewhat different from that of the other defendants.

It is undoubtedly true that the Chicago Great Western Company

had a right to change its rate on packing house products
103 for the purpose of increasing its business, but that right is qualified by the prohibition that that company shall not unduly discriminate against another kind of traffic; and when that company established and put in force from Kansas City and St. Joseph to Chicago rates on the products of live stock that were lower than rates it was then exacting between the same points on live stock it unduly discriminated against the latter traffic. This conclusion is based upon all the circumstances and conditions surrounding the transportation of and the relation existing between these two classes of traffic, which have been fully explained above and need not be repeated here. As it appears to us, a contrary holding would be equivalent to saying that a quasi-public servant may use its franchise for the purpose of building up some markets and destroying others, if in its judgment its stockholders will be benefited by such action. The large interests affected, the immense amount of money invested, the many live-stock markets and packing centers that have been built up and maintained under the former relation of rates, and the injury that will result if the change in that relation is permitted to continue, amply warrant the conclusion that the discrimination in question is not justified by the desire of the Chicago Great Western Company to benefit its stockholders by increasing its business.

Having held that the action of the Chicago Great Western Company in reducing the rate on the products from Kansas City and St. Joseph without making corresponding reductions in the live-stock rate was unlawful, the like ruling must be made as to the other defendants who have followed that company in making the disparity complained of effective. The rate on the products was reduced from the other Missouri River points and South St. Paul because it had been reduced from Kansas City and St. Joseph and reduced from the intermediate points because it had been reduced from the river, and all the defendants have been and are practicing at these various points an unlawful discrimination against live-stock traffic. Therefore, whether the unlawful practice was begun by one or by another is not a matter of great importance. It is apparent that should we issue an order only against the Chicago Great Western requiring it to restore the former relation of rates and the
104 order should be complied with, the principal ground of justification now advanced by the other defendants would be removed; and unless such action of the Chicago Great Western were followed by the other defendants it would become necessary to issue another order against the latter. Moreover, higher rates on live stock were being charged by a number of the other defendants as well as the Chicago Great Western before the Chicago Great Western contract was made and at the time the complaint was filed.

The defendants operating between South St. Paul and Chicago contend that if rates on live stock from points in Minnesota intermediate between South St. Paul and Chicago are reduced to Chicago the Minnesota Commission will make corresponding reductions from such Minnesota points to South St. Paul. This contention was supported by testimony of a member of that commission, who stated

that, in his opinion, the present adjustment of live-stock rates, as between South St. Paul and Chicago, is fair, and that, therefore, any reduction to Chicago, unless followed by a corresponding reduction to South St. Paul, would make the relation unequal. If such relation is now just (concerning which we express no opinion) and in complying with any order that may be made in this case these defendants reduce the rates to Chicago, corresponding reductions to South St. Paul should of course be made. This also applies to similar contentions of the interveners representing interests at points on the Missouri River.

The defendant, the St. Louis & San Francisco Railroad Company, is not engaged in the carriage of live stock to Chicago, and as to it the complaint should be dismissed. The formal order will also show the dismissal of the Atcheson, Topeka & Santa Fe Railway Company, heretofore allowed upon motion of complainant's counsel. As to the other defendants an order will be entered, in accordance with the conclusions above expressed, requiring them to cease and desist from making any higher charge for the transportation of live stock than they contemporaneously enforce for the carriage of products of live stock, between the points involved in this case.

105 KNAPP, *Chairman* (concurring):

While I agree with nearly everything said in the foregoing report and opinion, I feel bound to express my doubt whether the action of the Chicago Great Western did not, as regards the other carriers, introduce a competitive condition which creates or justifies an exception to the general rule. To my mind the competition brought about by that action is not easily distinguishable in legal effect from the competition which the Supreme Court in various decisions has held a valid excuse for discriminations claimed to be unlawful. Nor is it altogether clear to me that any order which the Commission has authority to make in this proceeding is likely on the whole to promote the public advantage. Nevertheless I am so unwilling, even under the circumstances here disclosed, to sanction a rate adjustment which I regard as fundamentally wrong, and which if permitted in this case would in my judgment establish a dangerous precedent, that I am constrained to concur in the findings and conclusions of my associates.

106 & 107 EXHIBIT Q.

108 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of January, A. D. 1905.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Hon. Joseph W. Fifer, Commissioners.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,

v.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO AND ALTON RAILWAY COMPANY; THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; THE HANNIBAL AND ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY; THE OMAHA, KANSAS CITY AND EASTERN RAILROAD COMPANY; THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY, Defendants, and THE RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; THE ST. PAUL UNION STOCK YARDS COMPANY OF ST. PAUL, MINNESOTA; THE SOUTH ST. JOSEPH LIVE STOCK EXCHANGE; THE UNION STOCK YARDS COMPANY OF OMAHA, NEBRASKA; THE SIOUX CITY STOCK YARDS COMPANY, and THE SIOUX CITY LIVE STOCK EXCHANGE OF SIOUX CITY, IOWA, Interveners.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

109 It is ordered, that, in accordance with said report and opinion, the present relation of rates maintained and enforced by defendants, the Chicago Great Western Railway Company; the Burlington, Cedar Rapids and Northern Railway Company; the Chicago, St. Paul, Minneapolis and Omaha Railway Company; the Chicago and Alton Railway Company; the Chicago and Northwestern Railway Company; the Chicago, Burlington and Quincy Railroad Company; the Chicago, Milwaukee and St. Paul Railway Company; the Chicago, Rock Island and Pacific Railway Company; the Hannibal and St. Joseph Railroad Company; the Illinois Central Railroad Company; the Iowa Central Railway Company; the Kansas City, St. Joseph and Council Bluffs Railroad Company; the Minneapolis and St. Louis Railroad Company; the Missouri Pacific Railway Company; the Missouri, Kansas and Texas Railway Company; the Omaha, Kansas City and Eastern Railroad Company; the Wabash Railroad Company, and the Wisconsin Central Railway

Company, whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes wrongful prejudice and discrimination, in violation of the provisions of the act to regulate commerce; and that said defendants be, and each of them is hereby, notified and required to cease and desist, on or before the 15th day of February, 1905, from maintaining or enforcing the said unlawful relation of rates, and from further continuing said unlawful prejudice and discrimination.

And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of section 15 of the act to regulate commerce.

110 *Certificate.*

OFFICE OF THE INTERSTATE COMMERCE COMMISSION.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, seventeen in number, and marked A to Q, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission at the city of Washington, in the District of Columbia, this 17 day of April, 1905.

[Seal Interstate Commerce Commission, 1887.]

EDWARD A. MOSELEY,
Secretary of the Interstate Commerce Commission.

(Endorsed:) Filed January 12, 1906, *Nunc pro tunc* as of April 29, 1905, Marshall E. Sampsell, Clerk.

111 And on the same day to-wit: the twenty ninth day of April, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of April 29, 1905.

27723.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

And now upon the filing of the bill of complaint and accompanying motion herein, it is hereby

Ordered, that the Secretary of the Interstate Commerce Commission be, and he is hereby authorized to make service of said bill of complaint and accompanying motion and of this order, by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of the said Interstate Commerce Commission, correctly addressed to the President or one of the Vice Presidents or the Secretary of each of the defendants herein.

It is also hereby Ordered that the said defendants file their answers to said bill of complaint on or before the first day of June A. D. 1905, and also appear before the Court on the first day of June, A. D. 1905, and show cause why such order and further preliminary orders as to the Court may seem meet should not be entered in this cause to speed the same to final hearing.

112 And on to-wit: the first day of June, A. D. 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of June 1, 1905, Extending Time for Defendants to Answer.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

By Agreement of Counsel the time for defendants to answer herein is extended to June 12th, 1905.

113 And afterwards to-wit: on the tenth day of June, 1905, came the Chicago Great Western Railway by its solicitors, Mr. Frank B. Kellogg, and filed in the clerk's office of said Court in said entitled cause its certain Answer to the Petition of the Interstate Commerce Commission in words and figures following to-wit:

114 *Answer Chicago Great Western Ry.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of The Chicago Great Western Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the state of Illinois, and that it has its principal offices in the city of Chicago, state of Illinois, in the city of St. Paul, in the state of Minnesota, and in the city of New York and state of New York, but it says that it does not know and can neither admit nor deny the averments of the said first paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons
115 and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States, and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Kansas City, Missouri, St. Joseph, Missouri, and Omaha, Nebraska, on the Missouri river, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri river or South St. Paul and Chicago, and to other Eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri river to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Ex. A is a correct copy of said complaint; but this

defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and
116 commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made, or have been made to this defendant by shippers of live-stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the same complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys, and it admits further that testimony was taken at such hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the fifth paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in re-
117 spect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that said Ex. P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Ex. Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Ex. P to said petition) and a copy of said order (Ex. Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith, but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Secs. 3 and 2 of the Act to Regulate Commerce.

118 It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Sec. 1 of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri river, Sioux City, in the State of Iowa, to Kansas City, in the state of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri river or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri river points and intermediate points and from South St. Paul and intermediate points to Chicago

119 were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has been at any time made to this defendant by any shipper of such livestock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri river and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been made the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said commission, were and have been very low, but this defendant has been obliged to make such rates and charges for the transportation of such products

from said points to Chicago because of the extreme competitive conditions existing at said Missouri river points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order
120 can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri river points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between such points have been fixed and established by such competition and to enable it to meet such competition.

That such competition in the transportation of packing-
121 house products from Kansas City, Omaha, South St. Paul and other Missouri river towns, between the said railroads and the rail and water routes from the Gulf of Mexico and the Lake ports, does not apply to live stock and especially when shipped locally from stations east of the Missouri river and east of St. Paul to Chicago, and points east of Chicago.

That at the time of filing the complaint before said commission there was in existence and ever since has been in existence proportional rates on all live stock originating west of the Missouri river and shipped east thereof, which are no higher than the rates on the products of live stock, so that substantially all of the live cattle and hogs shipped from the Missouri river to Chicago and points east of Chicago, are shipped on such proportional rates, which are not and have not been in excess of the rates charged for the transportation of the dressed product of cattle and hogs from such Missouri river points to Chicago and points east thereof.

Fourth. This defendant further avers that as heretofore stated

its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on livestock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the
122 Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low, and will not furnish it fair remuneration for the service to be performed by it.

Fifth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the state of Iowa, and St. Paul, in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri river, and in the country round about and adjacent to said towns, and that large stockyards and packing-houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stockyards and packing-houses at such points and the growth and development of such market towns has been and has been and now is of inestimable advantage to the stock-growers throughout said territory, furnishing them a near market for their live-stock and also giving them the advantage and benefit of the home market, as compared with the dis-
123 advantage of shipping their livestock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of lake Superior and lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of livestock upon which the country west of the Missouri river and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs

and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri river points and St. Paul and Chicago in said proceeding was *but* this was operating to the prejudice of Chicago and tended to divert livestock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale
124 of livestock at Missouri river points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and such hogs which would tend to injure or destroy such markets and which would tend to deprive the stock-growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock-growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the railroad commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and
125 insisted that any such order as has now been made by said commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock-growers throughout the country in the vicinity of said home markets and to the west thereof.

Sixth. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Wherefore, defendant prays that this action be dismissed.

FRANK B. KELLOGG,
General Counsel Chicago Great Western Ry., St. Paul, Minn.

126 STATE OF MINNESOTA, *County of Ramsey:*

Frank B. Kellogg came before me personally, and being duly sworn, doth say that he is the General Counsel of Defendant in the above entitled action; that the foregoing is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

FRANK B. KELLOGG.

Subscribed and sworn to before me on this 5th day of June A. D. 1905.

[NOTARIAL SEAL.] GUY CHASE,
Notary Public, Ramsey County, Minn.

(Endorsed:) Filed June 10, 1905 Marshall E. Sampsell, Clerk.

127 And on the same day to-wit: the tenth day of June 1905, came the Chicago, St. Paul, Minneapolis and Omaha Railway Company by its solicitor Mr. Thomas Wilson and filed in the clerk's office of said court in said entitled cause its certain Answer in words and figures following to-wit:

128 *Answer of Chicago, St. Paul, Minneapolis & Omaha Ry. Co.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and OTHERS.

The answer of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, Defendant, to the petition of the Interstate Commerce Commission, Petitioner:—

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:—

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, and that it has it- principal offices in the City of St. Paul, State of Minnesota; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of con-

tinuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, and as a common carrier from South St. Paul, in
129 the State of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other western points; and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint, but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of livestock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said
130 hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

V.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based

upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) were served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

VIII.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

131 IX.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for the transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago from South St. Paul in the State of Minnesota, or from points in the territory between South St. Paul and Chicago, "whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from South St. Paul, in the state

of Minnesota, or from points in the territory between South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been ob-
132 liged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of the said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri Rive- Points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of a very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the Lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such
133 competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are

located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the
134 Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, because it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which were in existence at the time of the filing of the said complaint and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal is not unlawful and does not constitute undue or unreasonable preference or advantage in favor of said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable prejudice or disadvantage against the said dressed products of cattle and hogs or against the City of Chicago, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as heretofore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order
135 compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it fair remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in the State of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been — now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have sub-
136 stantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs

and the rates and charges for the transportation of the dressed products of such cattle and hogs between St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complainang in this proceeding are the persons who are combining and
137 associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other person with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any charge being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the State of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from the Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for the transportation of the dressed products
138 of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any,

live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY,
By A. W. TRENHOLM, *Its General Manager.*

Attest:
E. E. WOODMAN, *Secretary.*
THOMAS WILSON,
Counsel for Defendant, Chicago, St. Paul, Minneapolis & Omaha Railway Company.

(Endorsed:) Filed Jun- 10, 1905. Marshall E. Sampsell, Clerk.

139 And on the same day to-wit: the tenth day of June, 1905, came the Chicago and North Western Railway Company by Mr. S. A. Lynde and filed in the clerk's office of said Court in said entitled cause its certain answer in words and figures following to-wit:

140 *Answer of Chicago & Northwestern Railway Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Chicago & Northwestern Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the states of Illinois, Wisconsin and Michigan, and that it has its principal offices in the City of Chicago, state of Illinois, and in the city of New York and state of New York; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Sioux City, Iowa and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to
141 other eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an

incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of livestock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it did not file any answer to said complaint for reason that no complaint was ever served upon it.

V.

142 It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission at which time the parties complainant and defendant with the exception of this defendant appeared by their attorneys, but that this defendant did not appear in said proceeding for the reason above stated; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges, that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle
143 and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendants says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the state of Iowa to Kansas City, in the state of Missouri, inclusive, and from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not
144 only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from St. Paul, in the state of Minnesota, or from points in the territory between Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago be-

cause of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for

145 the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico to the Lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points

146 to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers

in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of the conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between
147 said points than its rate and charge for the transportation of the live animal; is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable prejudice or advantage in favor of the said dressed products of cattle or hogs nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said

points which will be unreasonably low and will not furnish it reasonable remuneration for the services to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the state of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the state of Iowa, and St. Paul in the state of Minnesota, and other points in the general territory covered by said complaint had become large /arket towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished,
148 with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Inter-state Commerce Commission with respect to the differences between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and pros-
149 perity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair

consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions sur-
150 rounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation

thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charges for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri points, and from South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority
151 conferred upon said Commission by Law.

CHICAGO & NORTH-WESTERN
RAILWAY COMPANY,
By W. A. GARDNER,
Its General Manager.

Attest:
J. B. REDFIELD,
Assistant Secretary. [SEAL.]
S. A. LYND,
Counsel for Defendant, Chicago & North-western Railway Company.

(Endorsed:) Filed June 10, 1905. Marshall E. Sampsell, Clerk.

152 And on the same day to-wit: the tenth day of June, 1905, came the Chicago and Alton Railway Company by its solicitor Mr. Ralph M. Shaw, and filed in the clerk's office of said Court its certain Answer in words and figures following, to-wit:

153 *Answer of Chicago & Alton Railway Company.*

UNITED STATES OF AMERICA, *State of Illinois, ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Defendant, the Chicago & Alton Railway Company, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and insufficiencies in the bill of complaint of the said complainant manifest, for answer unto same or so much thereof as this defendant is advised it is necessary or material for it to answer unto answering says:

1. This defendant admits that it is a corporation organized and

existing under and by virtue of the laws of the State of Illinois, and that it has its principal offices in the City of Chicago, State of Illinois, but it says that it does not know and can neither admit nor deny the averments of the said first paragraph of said petition, as to the incorporation and offices of the several other defendants.

2. It admits that it is and has been, since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates, and
154 as a member of continuous through lines between points in different states of the United States, and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, from Kansas City, Missouri, on the Missouri river, and from points in the territory between Kansas City, Missouri, on the Missouri river, to Chicago, Illinois, and to other eastern points, and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on the lines west of Kansas City, Missouri, to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said act to regulate commerce, and the amendments thereto.

3. It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was, at the date of the filing of said petition, and has ever since been, an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this
155 defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

4. This defendant admits that it filed its answer to said complaint.

5. It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the fifth paragraph of said petition.

6. It admits that on or about the 7th day of January, 1905, the

Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

7. It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

8. It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

156 9. It denies that the charges maintained by it for the transportation of live cattle and live hogs on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of section one of said Act to Regulate Commerce.

10. Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

157 *First.* This defendant's rate for the transportation of live cattle and live hogs from Missouri River points and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs, on shipments thereof to Chicago from Kansas City, in the State of Missouri, and from points in the territory between Kansas City, Missouri, and Chicago, along the line of this defendant company, at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by the order of said Commission, were and have been very low and have not furnished a reasonable remuneration for the services rendered in the transportation of such products but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago, because of the extreme competitive conditions existing at said Kansas City, Missouri, in respect to the transportation of such products, and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs
158 between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said

product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated
159 on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the
160 transportation of live cattle and live hogs between said points are reasonable, and it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract, and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable preference or advantage against said live stock, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of

cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as heretofore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rate on live stock and deprive
161 this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it a reasonable reward for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the state of Iowa, and St. Paul, in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also thus giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant mar-
162 kets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

The said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate

Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products
163 of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs, that the rates and charges for the transportation thereof should not be compared one with the other, nor should the
164 rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other; that substantially all of the live cattle and hogs are shipped from points west of the Missouri River over the lines of this defendant, upon through rates, and that the rates from Kansas City,

Missouri, to Chicago, on such shipments, over the lines of this defendant, are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from Kansas City, Missouri, or Missouri River points over the lines of this defendant; that very few, if any, live cattle and live hogs are handled from Kansas City, Missouri, and Missouri River points, over the lines of this defendant, on the local tariff in force from Kansas City, Missouri, to Chicago; that at points east of Kansas City, Missouri, and east of the Missouri River, and between said Kansas City and said Missouri River and the City of Chicago, there are no plants or factories for the production of dressed beef or the products of cattle and hogs, and that there is no competition from any of such intermediate points to Chicago, between live cattle and live hogs and the products of live cattle and live hogs; that by reason of the foregoing facts this defendant avers that the rates from Kansas City, Missouri, on live stock and live hogs and the products thereof, are the same, and that there is no competition as between live stock and live hogs from any intermediate points to Chicago, and this defendant avers the fact to be that the rates of this defendant upon live stock from intermediate points to Chicago are very low and that there is no discrimination or wrongful prejudice or wrongful relation in rates as between live cattle and live hogs on the one hand and the products thereof on the other hand, from any point or points on the line of this
165 defendant east of Kansas City and the Missouri River to Chicago, Illinois.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, and said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is therefore an attempt on the part of the commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Further answering, this defendant denies each and every allegation of the said petition and of the said petitioner not hereinabove specifically admitted or denied, and denies that the petitioner is entitled to the relief prayed for, or any part thereof; and so, having answered the petition of the said petitioner, the said defendant prays

to be hence dismissed with its costs and charges in this behalf most grievously sustained.

CHICAGO & ALTON RAILWAY COMPANY,
By RALPH M. SHAW, *Its Solicitor.*

(Endorsed:) Filed June 10, 1905 Marshall E. Sampsell, Clerk.

166 And on the same day to-wit: the tenth day of June, 1905, came the Wabash Railroad Company by its solicitor, Mr. C. N. Travous and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

167 *Answer of Wabash Railroad Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The answer of the Wabash Railroad Company, impleaded as defendant to the petition of the Interstate Commerce Commission, petitioner.

This defendant, for answer, to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Illinois and other states, and that it has its principal offices in the city of St. Louis, State of Missouri, and in the City of New York and state of New York; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Sioux City, Iowa, and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri

River or South St. Paul and Chicago, and to other eastern
168 points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restrain- of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of livestock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

169 V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice

based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the state of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock concerning its said rates.

171 *Second.* The rates which were charged by this defendant for transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because such order can only be complied with by this defendant by the raising of its rates and charges for transportation of such products between said points, which if done would under the competitive conditions existing as herein explained, result in this defendant losing all said traffic, or by the lowering of its rates and charges for the transportation of live cattle and hogs between said points, which if done would result in unjustifiable loss and damage to it, and in view of the conditions which now exist in respect to such traffic, the order of said Commission is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and

172 live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs, or to an order compelling this defendant to increase its rates and charges for transportation of live stock products to conform to the said rates and charges upon live stock, which would deprive this defendant, as before stated, of all such traffic, and said order is therefore unlawful and beyond the power of said Commission.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to

the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and were and are necessarily so fixed in order to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions herein set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated
173 on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract or arrangement, the exact nature of which this defendant does not know, with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds, in consideration that it should have the carriage of all or a certain large part of all said products; which said contract or arrangement originated and forced upon this defendant the competitive conditions mentioned, and as a direct consequence thereof this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products, by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, so long as said competitive conditions exist, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its
174 rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, because it has been compelled by force of the competition aforesaid to carry the dressed

products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points, which resulted from the making of said contract and which have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of
175 the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it a reasonable reward for the service to be performed by it.

Sixth. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Morever, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Seventh. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products necessarily resulted from

the said contract or arrangement of one of the defendant's competitors, hereinabove referred to, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; solely because of the unauthorized and wrongful act of such competing carrier, and is an attempt on the part
176 of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to so make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Further answering this defendant says that petitioner is not entitled to the relief prayed, or any part thereof, and asks that it be dismissed with its reasonable costs, etc.

THE WABASH RAILROAD COMPANY,
By C. N. TRAVOUS, *Its Solicitor.*

(Endorsed:) Filed Jun. 10, 1905. Marshall E. Sampsell, Clerk.

177 And on to-wit: the twelfth day of June, 1905, came the Missouri, Kansas & Texas Railway Company, impleaded as defendant to the petition of the Interstate Commerce Commission by its solicitors and filed in the clerk's office of said Court its certain answer in words and figures following to-wit:

Answer of Missouri, Kansas & Texas Railway Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

The Answer of the Missouri, Kansas & Texas Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Kansas, and that it has its principal offices in the City of Parsons, Kansas, and in the City of St. Louis, in the State of Missouri; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition, as to the incorporation and officers of the several others defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of con-
tinuous through lines between points in different states of
178 the United States; and that it has been engaged in and is
now engaged in the transportation of live cattle and hogs, in connection with other lines of railway, to Chicago, in the State of Illinois, from some points on the Missouri River extending from Sioux City, Iowa, to Kansas City, Missouri, and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did, on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was originated pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the mem-
bers thereof had no interest whatever in the said petition so
179 filed with the Interstate Commerce Commission or in the sub-
ject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

180 VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the state of Minnesota, or from points in the territory between the Missouri River
181 or South St. Paul and Chicago," whereby such rates for transportation of live catle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts; and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant

and violative of the rights of this defendant for the reasons following namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago, because of the extreme competitive conditions ex-

182 existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet the rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said commission, seeking to compel this defendant to make the same rate or charge for the transportation of live stock and live hogs that is made by it for the transportation of such products from said points to Chicago, is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defend-nt by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports and other markets, and that the rates and charges which have been made by this

183 defendant and which are now in force by this defendant for the transportation of such products between said points have

been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendants' line in the territory lying between said river and the city of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri Rover points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused and is the result of conditions wholly beyond the control of this defendant and

184 defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said commission and this defendant says that so long as its rates and charges for transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charges exacted by it for the transportation of said live cattle and live hogs and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points have resulted from the execution of such contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed pro-

ducts of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvant-
185 age against said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs nor is its said action in this respect a violation of section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as heretofore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it a reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the state of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa and St. Paul, in the state of Minnesota and other points in the general territory covered by said complaint had become large market towns, and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the
186 killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof, and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the hand-

ling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between
187 the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of the country if any order should be put in force with respect to the rates on live cattle and hogs, or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Inter-
188 state Commerce Commission the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for

the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

189 Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereon during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; *and is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products;* and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant asks that the proceeding as to it be dismissed.

JAMES HAGERMAN,
JOSEPH M. BRYSON,
Attorneys for the Missouri, Kansas & Texas Railway Company.

(Endorsed:) Filed June 12, 1905, Marshall E. Sampsell, Clerk.

190 And on the same day to-wit: the twelfth day of June, 1905, came The Minneapolis and St. Louis Railroad Company by its solicitor, Mr. Albert E. Clarke, and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

191 *Answer of Minneapolis & St. Louis Railroad Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY, and Others.

The Answer of —, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the States of Minnesota and Iowa, and that it has its principal offices in the City of Minneapolis, State of Minnesota, and in the City of New York, and State of New York; but it says that it does not know and can neither admit nor deny the averments of the first paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is, and has been since the fifth day of April, 1892, a common carrier engaged in the transportation of persons and property by railroad, under joint through rates, and as a member of continuous lines between points in different states of the United States. It owns and operates lines of railroad extend-
192 ing from the cities of Minneapolis and St. Paul to the cities of Des Moines and Storm Lake, Iowa, and the City of Watertown, South Dakota; and as lessee of the Des Moines & Fort Dodge Railroad, it operates the last named railroad between Ruthven and Des Moines, Iowa. It does not handle, over any of its lines of railroad, either live stock or packing house product, from the Missouri River to Chicago, nor does it handle live stock or packing house product, over either of its Iowa lines, between the cities of Minneapolis or St. Paul and Chicago. The Des Moines and Fort Dodge Railroad, which this defendant operates as lessee, does not handle either live stock or packing house product from the Missouri River to Chicago, nor from Minneapolis or St. Paul to Chicago. The rates now charged and collected by this defendant upon shipments of live stock from points upon the Des Moines and Fort Dodge Railroad, and from points upon the lines of The Minneapolis and St. Louis Railroad in the State of Iowa, to Chicago, are too low to be fairly remunerative. The business of this defendant in respect to the transportation of live stock from points upon its owned, leased and operated lines in the state of Iowa, is competitive with business and

traffic originating upon the lines of railroad engaged in like business between the Missouri River and Chicago; and notwithstanding this defendant does not handle live stock or packing house product between the Missouri River and Chicago, its rates from its Iowa stations are largely affected and determined by competition with railroad carriers engaged in such through business. If the order of the Interstate Commerce Commission referred to in the complaint be made effective, the rates and earnings of this defendant for the transportation of live stock from points upon the said lines of railroad in the State of Iowa to the City of Chicago, will be so reduced and diminished as to be wholly unremunerative and insufficient to compensate this defendant for the actual cost of supplying the necessary and proper service.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said
193 complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was, at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Chicago Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

This defendant admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission; that testimony was taken at said hearings in behalf of said parties, and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in

respect to the matter of said complaint, setting forth its findings of fact and its conclusions based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

194 VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order, and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth specifically herein.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring the defendants to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City in the State of Iowa, to Kansas City in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs, are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant for the reasons following, namely:—

195 First. Rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were, at the

time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock, of its said rates.

Second. The rates which are charged for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago, at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products to Chicago because of the extreme competitive conditions existing in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation
196 of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports and to other markets, and that the rates and charges which have been made by this defendant for the transportation of such products have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago

and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect, in establishing a difference in the rates on said products and said live stock from towns where packing houses are located in
197 the territory lying between said river and the city of Chicago.

Fourth. This defendant further avers that, as heretofore stated its said rates on live stock have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive the defendant of its property without due process of law, and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs which will be unreasonably low, and will not furnish it fair remuneration for the service to be performed by it.

Fifth. That long prior to the filing of said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha in the state of Nebraska, Sioux City in the state of Iowa, and St. Paul in the state of Minnesota, and other points in the general territory covered by said complaint, had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs, had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the
198 establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for the disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock, upon which the country west of the

Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges for the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between the Missouri River points and St. Paul and Chicago on said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets, and was operating to the advantage of the said home markets which complaint this defendant believes to be wholly unfounded, but it avers
199 that the public interests which are involved in the maintenance and prosperity of these several home markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago, deserve and should receive full and fair consideration, and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs, or on the dressed and prepared products of such cattle and hogs, which would tend to injure or destroy such markets, and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint, except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested, and are protesting, against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission, the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the State of Iowa, appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates, and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established
200 and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Sixth. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges

for the transportation of the one be made the basis of the rates and charges for transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul, very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Seventh. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report (Exhibit P to this petition) that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduct its rate and charge for transportation of such live cattle and hogs from said points, to the rate and charge for the transportation of such dressed products; and is equivalent to an attempt on the part of the Commussion to make and estab-

201 lish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago, and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

And this defendant denies all and all manner of unlawful combination, confederacy, undue and unreasonable prejudice, unjust discrimination and violation of law wherewith it is by said petition charged and prays to be hence discharged with its reasonable costs and charges.

ALBERT E. CLARKE,
Attorney for Defendant The Minneapolis & St. Louis Railroad Company.

(Endorsed:) Filed June 12, 1905, Marshall E. Sampsell, Clerk.

202 And on the same day to-wit: the twelfth day of June, 1905, came the Burlington, Cedar Rapids and Northern Railway Company by its solicitors Mr. R. A. Jackson and W. T. Rankin and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

203 *Answer of Burlington, Cedar Rapids & Northern Ry. Co.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The answer of Burlington, Cedar Rapids and Northern Railway Company, impleaded as defendant, to the petition of the Interstate Commerce Commission, petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

That this defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Iowa, and that it has its principal offices in the City of Chicago, State of Illinois, but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now
204 engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs in connection with other lines of railroad to Chicago, in the State of Illinois, from Sioux City, Iowa, and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the State of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is

an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject mat-
205 ter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its finding of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the
206 rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce:

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

207 *First.* This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri river and South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been

obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering
208 of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and
209 controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents

per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed product of such cattle and hogs between said points, in order to meet said competitive rates on dressed products of said live stock, at a lower rate
210 than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points have resulted from the execution of such contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points that its rate and charge for the transportation of the live animal, is not lawful, and does not constitute undue or unreasonable prejudice or disadvantage in favor of said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law, and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a

rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish its reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in the State of Minnesota, and other points in the general territory
211 covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of animals and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there had grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed
212 products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair

consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared
213 before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers through the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the codditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for the transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation

thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this
214 defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant prays that it may be dismissed from this cause.

R. A. JACKSON AND
W. T. RANKIN,
Attorneys for the Burlington, Cedar Rapids and Northern Railway Company.

(Endorsed:) Filed Jun- 12, 1905. Marshall E. Sampsell, Clerk.

215 And on to-wit: the twelfth day of June, 1905, came the Iowa Central Railway Company by its solicitor Mr. George W. Seevers, and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

Answer of Iowa Central Railway Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The separate answer of Iowa Central Railway Company, impleaded as defendant, to the petition of the Interstate Commerce Commission, petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:—

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, and that it has its principal offices in the city of Minneapolis, State of Minnesota, and in the City of New York and State of New York; but it says that it does not know and can neither admit nor
216 deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the fifth day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates between points in the states of Minnesota, Iowa and Illinois, and that it has been and is now engaged in the transportation of live cattle and hogs and the dressed product thereof only within the states named; but avers that its said line of railroad does not reach the City of St. Paul or any point upon the Missouri River or the City of Chicago in the state of Illinois; that it neither originates business at any Missouri River point, nor delivers live stock or the product thereof originating upon its line at any point in the states mentioned to the said city of Chicago in the state of Illinois; that it does not fix or establish rates between St. Paul or Missouri River points and the City of Chicago, but participates only as an intermediate carrier in such rates upon live stock or the product thereof to and from such intermediate points between St. Paul and Missouri River points and Chicago as may be established or fixed by through carriers and to this extent only is interested or concerned in the through rates so made and to such extent and in this respect only is it engaged in the transportation of interstate commerce, or subject to the provisions of the Acts of Congress of the United States to regulate commerce between the states.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said fifth day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant
217 and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It further admits that said complaint came on for investigation and hearing before said Interstate Commerce Commission at which time complainant and the defendants appeared by their attorneys, but avers that no testimony was taken at said hearing either against or in behalf of this defendant.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its find-
218 ing of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) *was* served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of
219 February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South

St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced, and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said com-
220 plaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportaton of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points
221 east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred
222 pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago, the putting in force, therefore, of said rates of said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said

points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, because it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said pompetitive rates on said dressed products of said live stock, at a lower rate then the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the trans-
223 portation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in
224 the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof, and the establishment of such stock yards and packing houses at such points and the growth and development of

said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the In-
225 terstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating on rates established to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this
territory have protested and are protesting against any
226 change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the State of Minnesota and

representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rate and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transport*at*ed on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Com-
227 mission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago, and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant asks that the proceeding as to it be dismissed.

GEO. W. SEEVERS,
Attorney for Defendant.

(Endorsed:) Filed Jun- 12, 1905, Marshall E. Sampsell, Clerk.

228 And on the same day to-wit: the twelfth day of June, 1905, came the Chicago, Rock Island and Pacific Railway Company by its solicitors Mr. R. A. Jackson and Mr. W. T. Rankin and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

229 *Answer of Chicago, Rock Island and Pacific Railway Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Chicago, Rock Island and Pacific Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the States of Illinois and Iowa, and that it has its principal offices in the City of Chicago, State of Illinois, and in the City of New York and State of New York; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons
230 and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the State of Illinois, from Sioux City, Iowa, and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the State of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carrriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter
231 thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still

refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has
232 not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live
233 cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and

which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of the said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates
234 and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle and live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the city of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle

and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and
235 to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commissioner, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonable low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points have resulted from the execution of such contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between
236 said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage in favor of said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing

competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in the State of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of animals and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets
237 shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul, and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was

operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded; but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration
238 and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

239 Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant prays that it may be dismissed from this cause.

R. A. JACKSON AND
W. T. RANKIN,
Attorneys for the Chicago, Rock Island and Pacific Railway Company.

(Endorsed:) Filed Jun- 12, 1905, Marshall E. Sampsell, Clerk.

240 And on the same day to-wit: the twelfth day of June, 1905, came the Illinois Central Railroad Company by its solicitor-, Mr. J. M. Dickinson and Mr. Sidney F. Andrews and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

241 *Answer of Illinois Central Railroad Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Illinois Central Railroad Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, now and at all times hereafter, saving to itself all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof

as this defendant is advised it is material or necessary for it to make answer to, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Illinois and that it has its principal offices in the city of Chicago, State of Illinois, but it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

This defendant admits that on the 5th day of April, 1902, and ever since it has been and still is a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states in the United States, and that it has been and now is engaged in the transportation of live cattle and
242 live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from the following points on the Missouri River, to-wit: Sioux City, Iowa, and Omaha, Nebraska, and from certain territory adjacent to its line of railroad between said Missouri River points and Chicago, under joint through rates with its connecting carriers. Defendant further admits that it has been since said date and now is engaged in said transportation from South St. Paul, Minnesota, and certain territory between that point and Chicago, under joint tariffs with the Minneapolis & St. Louis Railroad Company, and admits that in respect of all said transportation it has been and is subject to all provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

242½ IV.

This defendant admits that it filed its answer to said complaint, and that a copy thereof is annexed to said petition, marked Exhibit "E."

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys, and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) *was* served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith, but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant.

IX.

It denies that the charges maintained by it for the trans-
243 portation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of the said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live

cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant, for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no
244 complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs which said rates and charges are now and were at the time of the filing of said

complaint and have been ever since very low and have never
245 been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed products of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said
246 Missouri River points to Chicago for a rate of 20 cents per hundred pounds. That unless this defendant charges a like rate, it would be prevented by reason of the competition and contract aforesaid, from engaging in the carrying or transportation of said dressed or prepared products of cattle and hogs from said Missouri River points, to-wit: Sioux City, Iowa, and Omaha, Nebraska, and would lose the revenue derived by it therefrom, which is desirable, and important, and valuable to it. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission

upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have
247 resulted from the making of said contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable preference or disadvantage against said live stock, or of said Missouri River points, or South St. Paul or said intermediate territory, as is charged in said complaint, nor does such action on its part constitute any undue or unreasonable advantage in favor of the dressed products of cattle or hogs, nor is its said action in this respect a violation of Sections 2 and 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and to deprive this defendant of its property without due process of law, and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the state of Iowa, and St. Paul, in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and ad-
248 jacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and

handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof, and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was
249 operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commission exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance

and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and
250 of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rate- from Missouri River points to Chicago on such shipments are a proportion or division of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points, so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle
251 and hogs from said Missouri River points and from said South St. Paul to Chicago, and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint, material to be answered, according to its best knowledge and belief, humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

ILLINOIS CENTRAL RAILROAD COMPANY,
By J. T. HARAHAN,
[SEAL.] *Second Vice-President.*

Attest:
W. G. BRUEN,
Ass't Secretary.

J. M. DICKINSON &
SIDNEY F. ANDREWS,
Counsel for Illinois Central R. R. Co.

(Endorsed:) Filed June 12, 1905. Marshall E. Sampsell, Clerk.

252 And on the same day to-wit: the twelfth day of June, 1905, came The Missouri Pacific Railway Company by its solicitors Mr. Martin L. Clardy and Mr. James C. Jeffery and filed in the clerk's office of said Court in said entitled cause its certain answer in words and figures following, to-wit:

253 *Answer of Missouri Pacific Railway Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

No. 27723.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

The Answer of the Missouri Pacific Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition, and to such parts thereof as it is advised that it is material for it to make answer unto, answering, says:

I. This defendant admits that it is a consolidated railroad corporation, chartered and existing under and by virtue of the laws of the States of Missouri, Kansas and Nebraska, and that it has its principal office in the City of St. Louis in the State of Missouri.

II. It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons

and property by railroad under joint, through rates and as a member of continuous, through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the State of Illinois, from Omaha, Nebraska, on the Missouri River; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines West of the Missouri River to Chicago and other Eastern points, and that in respect to such transportation it has been, and is, subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did,
254 on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit "A" is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but, on the contrary, alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaint- were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the

Interstate Commerce Commission made its report in writing
255 in respect to the matter of said complaint, setting forth its findings of fact and its conclusions based upon said facts, and that said Exhibit "P" to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its findings and determination of said complaint and that said Exhibit "Q" to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit "P" to said petition) and a copy of said order (Exhibit "Q" to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products on such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections Three and Two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of section One of said Act to Regulate Commerce.

X.

Further answering, this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or
256 prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of said complaint or by the facts, and that said order is -lawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points to Chicago were, at the time of the filing of said complaint before the Interstate Commerce Commission, and have been ever since, and are now, not only reasonable, but very low, and should not be reduced and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River, or from points in the territory between the Missouri River and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points in respect to the trans-
257 portation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic, is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points East of Chicago, was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been

fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri river to Chicago and points East thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates
258 between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said River and the City of Chicago.

Fourth. That on or about *the* August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry, during said term, said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant, in order to obtain any portion of said traffic, and to perform the services demanded of it by its customers in respect to said traffic, was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is, caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs
259 between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract and have existed ever since and are now in existence, the making by this

defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, nor does such action on its part constitute any undue or unreasonable prejudice or advantage against the said dressed products of cattle and hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that, as heretofore stated, its said rates on live stock between said points have not been and are not now unreasonably high, but, on the contrary, are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amend- of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it fair remuneration for the service to be performed by it.

260 *Sixth.* That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the States West of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for

the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

261 That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said terrritory West of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint, except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission on the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the State of Iowa appeared before said Commission and made vigorous

262 protests against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the West thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges

for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points West of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that *at said that* very few, if any, live cattle and *live cattle and* live hogs are handled from Kansas City, Missouri, and Missouri River points over the lines of this defendant, on the local tariff in force from Kansas City, Missouri to Chicago; that at points east of Kansas City, Missouri, and east of the Missouri River, and between said Kansas City and said Missouri River and the City of Chicago, there are no plants or factories for the production of dressed beef or the products of cattle and hogs, and that there is no competition from any such intermediate points to Chicago, between live cattle and live hogs and the products of live cattle and live hogs; that by reason of the foregoing facts this defendant avers that the rate from Kansas City, Missouri, on live stock and live hogs and the products thereof, are the same, and that there is no competition as between live stock and live hogs from any intermediate points to Chicago, and this defendant avers the fact
263 to be that the rates of this defendant upon live stock from intermediate points to Chicago are very low and that there is no discrimination or wrongful prejudice or wrongful relation in rates as between live cattle and live hogs on the one hand and the products thereof on the other hand, from any point or points on the line of this defendant east of Kansas City and the Missouri River to Chicago, Illinois.

Eighth. In view of the condition existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is therefore an attempt on the part of the commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Further answering, this defendant denies each and every allegation of the said petition and of the said petitioner not hereinabove specifically admitted or denied, and denies that the petitioner is en-

titled to the relief prayed for, or any part thereof; and so, having answered the petition of the said petitioner, the said defendant prays to be hence dismissed with its costs and charges in this behalf most grievously sustained.

264 MISSOURI PACIFIC RAILWAY COMPANY,
By MARTIN L. CLARDY,
JAMES C. JEFFERY,
Attorneys.

(Endorsed:) Filed Jun. 12, 1905. Marshall E. Sampsell, Clerk.

265 And on to-wit: the twelfth day of June, 1905, came the Chicago, Burlington & Quincy Railway Company (herein sued under the name Chicago, Burlington and Quincy Railroad Company) The Hannibal & St. Joseph Railroad Company, The Kansas City, St. Joseph & Council Bluffs Railroad Company and the Omaha, Kansas City & Eastern Railroad Company impleaded as defendants to the petition of The Interstate Commerce Commission by their respective solicitors and filed in the clerk's office of said Court their joint and several answer in words and figures following to-wit:

266 *Joint Answer of Chicago, Burlington & Quincy Ry. Co. and Others.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The joint and several Answer of the Chicago, Burlington & Quincy Railway Company (herein sued under the name Chicago, Burlington & Quincy Railroad Company), The Hannibal & St. Joseph Railroad Company, The Kansas City, St. Joseph & Council Bluffs Railroad Company, and the Omaha, Kansas City & Eastern Railroad Company, impleaded as Defendants to the Petition of The Interstate Commerce Commission, Petitioner.

These Defendants, each for answer to said Petition and to such parts thereof as they are advised that it is material for them to make answer unto, answering say

I.

These Defendants admit that they are corporations chartered and existing as in said petition set forth; but they say they do not know, and can neither admit nor deny the averments of the said First Paragraph of said Petition as to the incorporation and offices of the several other Defendants.

II.

They admit that they were, and have been since, the fifth day of April, 1902, common carriers engaged in the transportation of persons and property by railroad under joint through rates and as members of continuous through lines between points in different States of the United States; and that they have been and are now
267 engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, and to other Eastern points, each from some of the places set forth in said Petition, and that in connection with other lines of railroad they are also engaged in the transportation of cattle and hogs originating on lines West of the Missouri River to Chicago and other Eastern points, and that in respect to such transportation they have been and are subject to the provisions of the said Act to Regulate Commerce and thr Amendments thereto.

III.

They admit that the said Chicago Live Stock Exchange did on or about the said 5th day of April 1902, file with the Interstate Commerce Commission a complaint against these defendants and other carriers, and that said Exhibit A is a correct copy of said complaint; but these defendants deny that said Chicago Live Stock Exchange is an incorporated association, but on the contrary allege that they are informed and believe said Chicago Live Stock Exchange was at the date of the filing of said Petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several States, and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the Statutes of the United States and of the State of Illinois.

They further allege that said Live Stock Exchange and the members thereof had no interest whatever in the said Petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to these defendants by shippers of live stock, of the rates complained of in said Petition or of the adjustment of rates involved therein.

268 IV.

These defendants admit that they have filed their answers to said complaint, except said Omaha, Kansas City & Eastern Railroad Company, which alleges that it was never served with any process or order herein.

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They admit the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and they admit further that testimony was taken at said hearings in behalf of said parties, and thereafter argument was

heard by said Interstate Commerce Commission, as is alleged in the 5th Paragraph of said Petition.

VI.

They admit that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said Petition is a copy of said report.

VII.

They admit that on or about the 7th day of January 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint, and that said Exhibit Q to said Petition is a copy thereof.

VIII.

They admit that a copy of said report (Exhibit P to said Petition) and a copy of said order (Exhibit Q to said Petition) was served upon these defendants; and that they have not obeyed said order and that they still refuse to comply therewith; but they allege that said order is not a lawful order as to these defendants, and is in violation of the rights of these defendants, and the reasons why these defendants have not complied with said order are set forth
269 more specifically hereinafter.

IX.

They deny that the charges maintained by them for the transportation of live cattle and live hogs, on the one hand, and their charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections Three and Two of the Act to Regulate Commerce.

They deny that said charges result in unjust and unreasonable rate charges on live cattle and live hogs, in violation of Section One of said Act to Regulate Commerce.

X.

Further answering, these defendants say that the said order so made by the Interstate Commerce Commission, requiring these defendants to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for transportation of live cattle and hogs, and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for trans-

portation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts; and that said order is unlawful and not within the jurisdiction and power of said Commission, and is unreasonable as to these defendants and violative of the rights of these defendants, for the following reasons, namely:

270 First. These defendants' rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points, and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission, and have been ever since, and are now, not only reasonable but very low and should not be reduced; and no complaint has at any time been made to these defendants by any shipper of such live stock of the said rates.

Second. The rates which were charged by these defendants for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but these defendants have been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive considerations existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products.

And these defendants aver and charge that the said order of said Commission, seeking to compel these defendants to make the same rate or charge for the transportation of live cattle and live hogs that is made by them for the transportation of such products from

271 said points to Chicago, is unreasonable and violative of the rights of these defendants, and unlawful because this order can only be complied with by these defendants by the lowering of their rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling these defendants to so lower their rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint, and have been ever since, very low, and have never been the subject of any com[illegible]nt on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition

between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by these defendants and which are now in force by these defendants for the transportation of such products between said points have been fixed and established by such competition and to enable them to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a sim-
272 ilar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendants' line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of their competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which they agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20¢ per hundred pounds, and these defendants in order to obtain any portion of said traffic and to perform the services demanded of them by their customers in respect to said traffic were compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by these defendants as are complained of, was and is caused, and is the result of conditions wholly beyond the control of these defendants, and defendants further aver that it is not possible for them to establish such parity between their charges for the transportation of live cattle and live hogs, on the one hand, and their charges for the transportation of the said products of such cattle and hogs, on the other hand, as they are ordered to do by said Interstate Commerce Commission, except by the lowering of their rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and these defendants say that so long as their
273 rates and charges for the transportation of live cattle and live hogs between said points are reasonable, they cannot be lawfully compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that they have been compelled by force of the competition afore-

said to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by them for the transportation of said live cattle and live hogs; and these defendants further aver that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract, and have existed ever since and are now in existence, the making by these defendants of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than their rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock; nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is their said action in this respect a violation of Section 3 of The Act to Regulate Commerce.

Fifth. These Defendants further aver that as hereinbefore stated their said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative; but that the order of said Commission in effect is, in view of existing competitive conditions as aforesaid, equivalent to an order compelling these Defendants to reduce their said rates on live stock
274 and deprive these defendants of their property without due process of law, and is in violation of the 14th Amendment of the Constitution of the United States, in that it compels these defendants to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish them reasonable remuneration for the services to be performed by them.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the State of Missouri, Omaha and South Omaha in the State of Nebraska, Sioux City in the State of Iowa, and St. Paul in the State of Minnesota, and other points in the general territory covered by said complaint, had become large market towns and the natural markets for a great part of the live stock raised in the States west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of animals and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold, and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points, and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage

of shipping their live stock to Chicago or to more distant markets, and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

275 That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock, upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages, and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago, and tended to divert live stock from the Chicago market to these several home markets, and was operating to the advantage of said home markets, which complaint these defendants believe to be wholly unfounded; but they aver that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration, and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs, or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complain-

276 ing in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the Commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter; while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the State of Iowa appeared before said Commission and made vigorous protests against the making of any reduction in said cattle and hog rates, and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of

the several home markets which have been so established and have grown up in said territory, and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates, and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates, and are not in excess of
277 the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P., to said Petition, that this rate and charge for transportaton of such dressed products is now established by the said contract hereinabove referred to, and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling these defendants to reduce their rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, these defendants pray to be hence discharged with their reasonable costs and charges in this behalf most wrongfully sustained.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY,
HANNIBAL & ST. JOSEPH RAILROAD COMPANY,
KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY,
OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY,
By CHESTER M. DAWES, *Their Solicitor.*

Chicago, June 3rd, 1905.

(Endorsed:) Filed June 12, 1905. Marshall E. Sampsell, Clerk.

278 And on to-wit: the twelfth day of June, 1905, came the Chicago, Milwaukee and Saint Paul Railway Company, impleaded as defendant to the Petition of the Interstate Commerce Commission by its solicitors and filed in the clerk's office of said Court its certain Answer in words and figures following, to-wit:

279 27723.

Answer of Chicago, Milwaukee & Saint Paul Railway Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Chicago, Milwaukee and Saint Paul Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:—

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the state of Wisconsin but avers that it has its principal office in the city of Milwaukee, state of Wisconsin, instead of in the City of Chicago, state of Illinois as alleged in said petition, but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates, and as a member of continuous through lines between points in different
280 states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Sioux City Iowa, Omaha, Nebraska, and Kansas City Missouri, on the Missouri River, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other eastern points, and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and

is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and
281 the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys, and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusions based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint, and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said peti-
282 tion) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle or hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher
283 than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of the said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri

River and from South St. Paul, in the state of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago, because of the extreme competitive conditions existing at said Missouri River points, and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the
284 transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago, and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to
285 Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses

are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs on the one hand, and its charges for the transportation of the said products of such cattle and hogs on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce
286 Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs, between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonbly low rate by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract, and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not

now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing
287 competitive conditions, as *ai* said, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it fair or reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City in the state of Iowa, and St. Paul in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yeards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same
288 time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to

the prejudice of Chicago and tended to divert live stock from the Chicago Market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that region if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend
289 to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago Market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

290 Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points so that at said Missouri River points and at St. Paul very few, if any, live cattle

and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

291 All of which matters and things this defendant is ready to prove and maintain; and it therefore prays to be dismissed.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
By H. R. WILLIAMS, *Its General Manager.*

GEO. R. PECK,
BURTON HANSON,
Of Counsel.

(Endorsed:) Filed June 12, 1905. Marshall E. Sampsell, Clerk.

292 And on to-wit: the third day of July, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of July 3, 1905—Cause Set for Hearing on September 15, 1905.

27723.

THE INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Ordered that this cause be set down for final hearing on pleadings and proofs on September 15th, 1905.

293–334 And on to-wit: the fifteenth day of September, being one of the days of the regular July term of said Court,

1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of September 15, 1905, *Consolidating with Case No.* 27829.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Now come the parties by their solicitors and on motion of the United States Attorney, It is Ordered, that this cause be consolidated with No. 27,829, The Interstate Commerce Commission *v.* Chicago Great Western Railway Company, *et al.*

* * * * * * *

335 And on to-wit: the eighth day of September, 1905, came the Union Stock Yards Company of Omaha, Limited by its Solicitor and filed in the clerk's office of said court in said entitled cause its certain Petition in words and figures following to-wit:

336 *Petition of Union Stock Yards Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois. In Equity.

No. —.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition.

To the honorable the judges of the circuit court of the United States for said district:

The petition of the Union Stock Yards Company of Omaha (Limited) hereinafter referred to as the Stock Yards Company, by leave of court first had and obtained to intervene herein, respectfully shows to Your Honors:—

1. That it is and has been for many years a corporation duly organized and existing under and by virtue of the laws of the State of Nebraska, with authority by reason thereof, to construct, own, maintain and operate stockyards at and near the City of South Omaha in said state for the purpose of receiving, selling, feeding, watering and otherwise caring for and receiving all kinds of live stock delivered to it and awaiting transportation or sale or otherwise, and to charge and receive compensation for all such services.

2. That in the year 1884 your petitioner constructed at great expense, and has since at great expense enlarged, improved and maintained, and still maintains and operates stock yards at
337 the City of South Omaha which have cost several millions of dollars and are now in successful operation, and many extensive packing houses have been built and maintained in their immediate vicinity, all of which offers a convenient and excellent market for all kinds of live stock.

3. That the said Stock Yards Company was induced to make the said investment because the proper and healthy development and growth of the country as well as reasons of humanity required that live animals be killed and manufactured into their commercial products as near the place of their production and growth as markets of sufficient magnitude could secure proper competition and trade, and transportation could be established.

4. The defendant railroad and railway companies, mentioned as defendants in this action, are engaged in the carriage of property, including live stock, from the territory west of Chicago as far as the Pacific Ocean, and have for a long time been and now are making and giving undue and unreasonable preference and advantage in the carriage of live stock from points west of Chicago to Chicago to the detriment and injury and prejudice of the city of South Omaha, and your petitioner, the said Stock Yards Company, and subjecting your petitioner and the said City of South Omaha and the live stock traffic thereof to undue and unreasonable prejudice and advantage in that they charge, collect and receive for the transportation of live stock in carloads on their respective lines from all points west of the Missouri River to the City of South Omaha, a much greater proportional rate for the distance carried than the rate charged and collected by said railroad companies from the Missouri River to the City of Chicago. That a large portion of the rate charged for shipment of live stock originating west of the Missouri River to the City of Chicago is
338 demanded, collected and received for the portion of the way ending at the Missouri River, and a very small portion of the rate charged is for the distance from the Missouri River to the City of Chicago, all of which your petitioner charges is contrary to the provisions of the act of Congress entitled "An act to Regulate Commerce."

5. That a large number of the cattle transported by said defendant railroad companies from the territory west of the Missouri River are of the description called feeders and are taken to points within a few hundred miles of the City of South Omaha where favorable conditions exist for such feeding; that said defendant railroad companies for the purpose of inducing the owners of such cattle to ship to Chicago when fattened, instead of selling at South Omaha, return to the owners of said cattle who will ship to Chicago a large portion of the compensation charged and received from them for shipping to South Omaha, which is the same compensation demanded, collected and received from all shippers alike and for a contemporaneous service, thereby giving undue and unrea-

sonable preference to the City of Chicago and to shipments to the City of Chicago of cattle over your petitioner and the City of South Omaha, and subjecting your petitioner, the City of South Omaha and the live stock so carried by them to unreasonable and undue disadvantage, contrary to the provisions of said act of Congress entitled "An act to Regulate Commerce."

6. Your petitioner denies that the rates charged, collected or received by the defendant carriers for the transportation of live stock from points in Iowa and Missouri to the City of Chicago are unjust or unreasonable as compared with the rates to the Missouri River and to South Omaha from points west of there or from points east of there in the states of Iowa and Missouri to the city of South Omaha, so as to subject the City of Chicago or the persons
339 who made the original complaint before the Interstate Commerce Commission to any prejudice or disadvantage.

7. Your petitioner further answering the complaint herein admits the statements made in paragraphs 1, 2, 3, 4, 5, and 6, but that as to the matters and things set forth in paragraphs 7 and 8 of the complainant's bill your petitioner has no information and knowledge upon which to form a belief further than is acquired from the allegations of said complaint, and it therefore denies the allegations in that regard.

8. As to the allegations contained in paragraph 9 of the complaint the defendant makes no allegation or claim as to the reasonableness of the rates on live cattle and hogs nor as to the reasonableness of the rates on dressed or prepared products of live cattle and hogs, but your petitioner denies that the adjustment of such rates of defendant railroad or railway companies as they now exist and have heretofore existed works an unreasonable or unjust discrimination against anyone engaged in shipping or dealing in live stock, or live stock product, or slaughtering and packing the same into product, or dealing in live stock or the products thereof.

9. Your petitioner further represents and shows to Your Honors that the complaint filed before the Interstate Commerce Commission upon which the order set out in the bill of complaint in this action was made, was not filed by any person, corporation or place engaged in raising live stock or in the shipment of live stock to market or elsewhere; was not made by anyone engaged in the production and sale of live stock in the open market, and moreover was not made by anyone engaged in slaughtering and packing live stock into product, or dealing in them or in live stock, and further, was not made by anyone engaged in the shipment of the product of live
340 stock, but on the other hand, was made by a certain association called the Chicago Live Stock Exchange which has no capital and has no business except to make rules and enforce them against its own members in acting as the agents of people engaged in the shipping of live stock to the Chicago market; that no person or corporation engaged in the shipment of live stock on the rates from the Missouri River to Chicago has even made any complaint that such rates were unjust and gave any undue preference to any

kind of traffic or to any person or to any place or corporate interest; that no member of the said Chicago Live Stock Exchange who made said complaint before the said Interstate Commerce Commission was engaged in raising live stock for or in shipping cattle on the rates from the Missouri River or west of the Missouri River to the City of Chicago; nor were they engaged or interested in the shipment of product nor live stock from the Missouri River to the City of Chicago or east of the Missouri River, nor were they or any of them dealers therein.

Your petitioner therefore submits to Your Honors that the Chicago Live Stock Exchange was not authorized under the act of Congress entitled "An Act to Regulate Commerce" to file the complaint mentioned, and the filing thereof gave no jurisdiction whatever to the said the Interstate Commerce Commission and its order was without jurisdiction and is without authority and is null and void.

Your petitioner further alleges and shows to Your Honors that the rates on live stock in territory in the state- of Iowa and Missouri tributary to the City of South Omaha, and to points in Nebraska and South Dakota tributary to said City of South Omaha, and the rates from a point in Iowa equidistant from the Missouri River and the City of Chicago to the City of Chicago are so adjusted and so arranged and so operated under by the defendant railway companies as to favor the City of Chicago and so as to work an unjust discrimination to the City of South Omaha, and so as to give an unreasonable preference to the City of Chicago, and undue and unreasonable advantage to that city over the City of South Omaha.

341–380

Your petitioner further represents and shows to your Honors that if an order should be made by this Honorable Court compelling the defendant railway companies to reduce their charges on live stock from the Missouri River to Chicago to 18½ cents or in any other amount, the rates charged for carrying live stock from the states of Missouri and Iowa to South Omaha from points 250 miles east of the city of South Omaha should be reduced in proportion otherwise the order of the court would work an undue and unjust preference in favor of the shipments to the City of Chicago and would be to the great prejudice of the City of South Omaha and your petitioner.

Your petitioner therefore prays that if an order shall be finally made herein requiring a reduction of the live stock rate between the Missouri River and the City of Chicago, or between the City of South Omaha and the City of Chicago that the rates in all territory tributary to the City of South Omaha lying east of said city in the states of Iowa and Missouri be reduced proportionally, and that a readjustment of the rates charged by the different railroad companies from all points in the territory tributary to the City of South Omaha be also at the same time ordered so as to render said rates just and reasonable and to prevent the unjust discrimination that would otherwise exist in favor of shipments to the City of Chicago; and your petitioner prays for such further orders and decrees as shall

be just and proper in the premises and will protect the interests of your petitioner herein.

THE UNION STOCK YARDS COMPANY
OF OMAHA, LIMITED,
By FRANK T. RANSOM, *Its Attorney.*

(Endorsed:) Filed Sep. 8, 1905 Marshall E. Sampsell, Clerk.

* * * * * * *

381 And on to-wit: the fifteenth day of September, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of September 15, 1905.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO.

Now come the parties by their solicitors, and leave is given to T. M. Sinclair & Company, Limited, St. Paul Union Stock Yards Company, St. Joseph Stock Yards Company, Sioux City Stock Yards Company and Minnesota Railroad and Warehouse Commission respectively to file petitions of intervention; and thereupon the pleas of the defendants being over-ruled, said defendants file answers instanter and the complainant its replication thereto.

And the complainant has leave to file certified copies of the findings of the Interstate Commerce Commission, testimony, evidence taken and order of Complainant.

And thereupon said consolidated cases are set down for final hearing on pleadings and proofs; and the same being heard in part when the hour for adjournment arrived the further hearing is postponed until Monday morning next at 10 o'clock A. M.

382 And on to-wit: the fifteenth day of September, 1905, came T. M. Sinclair & Company, Limited, by its solicitor and filed in the clerk's office of said Court its certain Petition in the words and figures following to-wit:

383 *Petition of T. M. Sinclair & Company, Limited.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

In Equity. No. —.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition of Intervention of T. M. Sinclair & Company, Limited.

To the Honorable the Judges of the Circuit Court of the United States for said District, in Equity Sitting:

The petition of T. M. Sinclair & Company, Ltd., of Cedar Rapids, Iowa, by leave of court first had and obtained to intervene herein, respectfully shows to your Honors:

1. That it is, and has been for more than five years last past, a corporation organized and existing under the laws of the State of Iowa, engaged in carrying on a packing house at Cedar Rapids, Iowa, where its principal business is the purchase, slaughter and packing of hogs and cattle, and the shipping, sale and disposition of their slaughtered products and the by-products of such packing house business.

2. That they are the successors of a former corporation under the laws of Iowa, known as T. M. Sinclair & Company, and that T. M. Sinclar & Company for many years carried on an extensive
384 packing house business, in character the same as that now carried on by your petitioner, occupying the same plant and grounds for that purpose.

3. That the plant and grounds of petitioner at Cedar Rapids have cost in the neighborhood of One Million Dollars, and that petitioner has expended thereon about a Half Million Dollars during the last five years. That the finished product from the petitioner's packing house amounts annually to more than one hundred million pounds, and that the miscellaneous tonnage into petitioner's plant, exclusive of live animals for slaughter, likewise amounts to about one hundred million pounds annually.

4. That a very considerable proportion of petitioner's finished product is shipped either to Chicago, locally, or sold to dealers on a Chicago basis of freights.

5. Your petitioner buys its hogs and cattle for slaughter principally at interior points in the State of Iowa, but purchases a portion thereof at Missouri River points. That the average freight rate paid by your petitioner on hogs shipped to its packing house for slaughter during the years 1900, 1901, 1902, 1903 and 1904 has been Eleven Cents per hundred pounds. That the local rate for petitioner's finished product from Cedar Rapids to Chicago, now in force, and

for six months last past, has been and is Thirteen and one-half cents per hundred pounds, making a total freight charge paid by the petitioner from the point of origin of live animals slaughtered by it and the finished product thereof to Chicago, locally, of Twenty-four and one-half cents per hundred pounds. That the rate on live hogs, complained of by the petition or bill in this suit, is Twenty-
385 three and one-half cents per hundred pounds from counties in Iowa bordering upon the Missouri River, and from counties in Iowa bordering on the Mississippi River, Fifteen cents per hundred pounds, with varying charges in intermediate counties, which make the average rate on live hogs from Iowa to Chicago less than Twenty-one cents per hundred pounds. That these rates now give the Chicago packers an advantage over an interior packing house in Iowa of over Three and one-half cents per hundred pounds; and your petitioner avers and charges the fact to be that any increase of the present rates of freight upon its finished product from Cedar Rapids to Chicago, locally, over and above those hereinbefore stated and set forth, or any decrease in the present freight rates on live hogs from Iowa to Chicago, will operate as a further discrimination in favor of Chicago packers, as against your petitioner, and will seriously imperil the business and investment of your petitioner.

6. That of the defendants in this suit, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Illinois Central Railroad Company, and the Chicago & North-Western Railway Company transport live animals and freight from interior points in Iowa, including Cedar Rapids, where the packing house of this petitioner is located, to Chicago, and that these are the only railway defendants which reach the City of Cedar Rapids, Iowa, or transport freight and live animals from there to Chicago.

7. Your petitioner intervenes herein as a defendant for the purpose of protecting its own interests, and of defending against rates proposed by the petition or bill herein, which, if established,
386 will operate oppressively against this petitioner and injuriously affect its investment and business interests, as hereinbefore narrated and set forth. It specially denies that the relation maintained by the railway defendants between the rates on live hogs from Iowa, on the one hand, and on the dressed or prepared products of such hogs from Iowa, on the other hand, whereby the rates on the former are higher than on the latter, as aforesaid, creates an undue and unreasonable prejudice, or operates as an unjust discrimination as against live hogs shipped from the State of Iowa; but it avers that, on the contrary, such rates operate as an unjust and undue discrimination in favor of Chicago packers as against the products of the packing house of your petitioner, shipped to Chicago, locally.

Wherefore, your petitioner prays that the prayer of the petition or bill herein be denied, and that said petition or bill be dismissed, in so far as it seeks to decrease the rates on hogs from Iowa points to Chicago.

T. M. SINCLAIR & COMPANY, LIMITED,
By CHAS. A. CLARK, *Its Solicitor.*

UNITED STATES OF AMERICA, *State of Illinois, County of Cook,* ss:

E. T. Koch, being duly sworn, says that he is Traffic Manager of T. M. Sinclair & Company, Ltd., the above mentioned intervening defendant; that he has read the foregoing answer and knows the contents therof, and that the same is true, of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes it to be true.

(Signed) E. T. KOCH.

Subscribed and sworn to before me this 14th day of September, 1905.

[SEAL.] W. J. COLEMAN,
Notary Public in and for Cook County, Ill.

(Endorsed:) Filed Sept. 15, 1905. Marshall E. Sampsell, Clerk.

387 And on to-wit: the fifteenth day of September, 1905, came the St. Joseph Stock Yards Company by its solicitor and filed in the clerk's office of said Court its certain Petition in words and figures following to-wit:

Petition of St. Joseph Stock Yards Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition.

To the Honorable the Judges of the Circuit Court of the United States for said District:

The petition of the St. Joseph Stock Yards Company, hereinafter referred to as the Stock Yards Company, by leave of court first had and obtained to intervene herein, respectfully shows to your Honors:

1. That it is and has been for many years a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, with authority by reason thereof to construct, own, maintain and operate stock yards at and near the city of St. Joseph in said state for the purpose of receiving, selling, feeding, watering and otherwise caring for, and delivering all kinds of live stock delivered to it and awaiting transportation or sale or otherwise, and to charge and receive compensation for all such services.

2. That in the year 1889, your petitioner's predecessor in interest constructed at great expense, and petitioner has since at great expense enlarged, improved and maintained, and still main-
388 tains and operates stock yards at the city of St. Joseph which have cost several millions of dollars and are now in success-

ful operation, and many extensive packing houses have been built and maintained in their immediate vicinity, all of which offers a convenient and excellent market for all kinds of live stock.

3. That the said Stock Yards Company was induced to make said investment because the proper and healthy development and growth of the country as well as reasons of humanity required that live animals be killed and manufactured into their commercial products as near the place of their production and growth as markets of sufficient magnitude could secure proper competition and trade, and transportation could be established.

4. The defendant railroad companies are engaged in the carriage of property, including live stock, from the territory west of Chicago as far as the Pacific Ocean, and have for a long time been and now are making and giving undue and unreasonable preference and advantage in the carriage of live stock from points west of Chicago to Chicago to the detriment and injury and prejudice of the city of St. Joseph, and your petitoner, the said Stock Yards Company, and subjecting your petitioner and the said city of St. Joseph and the live stock traffic thereof to undue and unreasonable prejudice and disadvantage in that they charge, collect and receive for the transportation of live stock in carloads on their respective lines from all points west of the Missouri River to the city of St. Joseph, a much greater proportional rate for the distance carried than the rate charged and collected by said railroad companies from the Missouri River to the City of Chicago. That a large portion of the rate charged for shipment of live stock originating west of the Missouri River to the city of Chicago is demanded, collected and received for the portion of the way ending at the Missouri River, and a very small portion of the rate charged is for the distance from the
389 Missouri River to the city of Chicago all of which your petitioner charges is contrary to the provisions of the act of Congress entitled "An Act to Regulate Commerce."

5. That a large number of the cattle transported by said defendant railroad companies from the territory west of the Missouri River are of the description called feeders and are taken to points adjacent to the city of St. Joseph where favorable conditions exist for such feeding that said defendant railroad companies for the purpose of inducing the owners of such cattle to ship to Chicago when fattened, instead of selling at St. Joseph, return to the owners of said cattle who will ship to Chicago a large portion of the compensation charged and received from them for shipping to St. Joseph, which is the same compensation demanded, collected and received from all shippers alike and for a contemporaneous service, thereby giving undue and unreasonable preference to the city of Chicago, and to shipments to the city of Chicago of cattle over your petitioner and the city of St. Joseph and subjecting your petitioner, the city of St. Joseph and the live stock so carried by them to unreasonable and undue disadvantage, contrary to the provisions of said act of Congress entitled "An Act to Regulate Commerce."

6. Your petitioner denies that the rates charged, collected or received by the defendant carriers for the transportation of live stock

from points in Iowa and Missouri to the city of Chicago are unjust or unreasonable as compared with the rates to the Missouri River and to St. Joseph from points west of there or from points east of there in the states of Iowa and Missouri to the city of St. Joseph, so as to subject the city of Chicago or the persons who made the original complaint before the Interstate Commerce Commission to any prejudice or disadvantage.

7. Your petitioner further answering the complaint herein admits the statement made in paragraphs 1, 2, 3, 4, 5 and 6 but
390 that as to the matters and things set forth in paragraphs 7 and 8 of the complainant's bill your petitioner has no information and knowledge upon which to form a belief further than is acquired from the allegations of said complaint, and it therefore denies the allegations in that regard.

8. As to the allegations contained in paragraph 9 of the complaint the defendant makes no allegation or claim as to the reasonableness of the rates on live cattle and hogs nor as to the reasonableness of the rates on dressed or prepared products of live cattle and hogs, but your petitioner denies that the adjustment of such rates of defendant railroad or railway companies as they now exist and have heretofore existed works an unreasonable or unjust discrimination against any one engaged in shipping or dealing in live stock, or live stock products, or slaughtering and packing the same into product, or dealing in live stock of the products thereof.

9. Your petitioner further represents and shows to your honors that the complaint filed before the Interstate Commerce Commission upon which the order set out in the bill of complaint in this action was made, was not made or filed by any person, corporation or place engaged in raising live stock or in the shipment of live stock to market or elsewhere; nor by any one engaged in the production and sale of live stock in the open market; nor by anyone engaged in slaughtering and converting live stock into its products, or dealing in live stock or its products; nor by any one engaged in the shipment of the products of live stock but that the sole complainant therein was a certain association called the Chicago Live Stock Exchange which has no capital and has no business except to make rules and enforce them against its own members in acting as the agents of people engaged in the shipping of live stock to the Chicago market; that no person or corporation engaged in the shipment of
Live stock on the rates from the Missouri River to Chicago
391 has ever made any complaint that such rates were unjust and gave any undue preference to any kind of traffic or to any person or to any place or corporate interest that no member of the said Chicago Live Stock Exchange was engaged in raising live stock or in shipping the same from the Missouri River or west of the Missouri River to the City of Chicago; nor were they engaged or interested in the shipment of live stock or its product from the Missouri River to the city of Chicago or east of the Missouri River, nor were they or any of them dealers in live stock or any of its products.

Your petitioner therefore submits to your honors that the Chicago Live Stock Exchange was not authorized under the act of Congress

entitled "An Act to Regulate Commerce" to file the complaint mentioned and the filing thereof gave no jurisdiction whatever to the said Interstate Commerce Commission and its order was without jurisdiction or authority and is null and void.

Your petitioner further alleges and shows to your honors that the rates on live stock from all points in the states of Iowa and Missouri tributary to the City of St. Joseph and from all points west of the Missouri River tributary to said city of St. Joseph, to the city of Chicago, are so adjusted and so arranged and so operated under by the defendant railway companies as to favor the city of Chicago and so as to work an unjust discrimination against the city of St. Joseph and so as to give an unreasonable preference to the city of Chicago and undue and unreasonable advantage to that city over the city of St. Joseph.

Your petitioner further represents and shows to your honors that if an order should be made by this honorable court compelling the defendant railway companies to reduce their charges on live stock from the Missouri River to Chicago to 18½ cents or any other amount, the rates charged for carrying live stock to the city of St. Joseph from all points in the state of Missouri and from
392 all points in the state of Iowa within two hundred and fifty miles of the city of St. Joseph should be reduced in proportion; otherwise such order would work an undue and unjust preference in favor of the city of Chicago to the great prejudice of the city of St. Joseph and your petitioner.

Your petitioner therefore prays that if an order shall be finally made herein requiring a reduction of the live stock rate between the Missouri River and the city of Chicago, or between the city of St. Joseph and the city of Chicago that the rates in all territory tributary to the city of St. Joseph lying east of said city in the states of Iowa and Missouri be reduced proportionally, and that a re-adjustment of the rates charged by the several defendant railroad companies from all points in the territory tributary to the city of St. Joseph be also at the same time ordered so as to render said rates just and reasonable and to prevent the unjust discrimination that would otherwise exist in favor of shipments to the city of Chicago and against the City of St. Joseph; and your petitioner prays for such orders and decrees as shall be just and proper in the premises and will protect the interests of your petitioner herein.

ST. JOSEPH STOCK YARDS COMPANY,
By BROWN & DOLMAN, *Its Attorneys.*

(Endorsed:) Filed Sept. 15, 1905, Marshall E. Sampsell, Clerk.

393 And on to-wit: the fifteenth day of September, 1905, came the St. Paul Union Stockyards Company by its solicitor and filed in the clerk's office of said court its certain Petition in words and figures following to-wit:

Petition of St. Paul Union Stockyards Company.

United States Circuit Court, Northern Division of the Northern District of Illinois.

In Equity.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition.

To the Honorable the Judges of the Circuit Court of the United States for said District and Division:

The Petition of the St. Paul Union Stockyards Company, hereinafter referred to as the Stockyards Company, filed by leave of court, respectfully shows:

1. That it is and for over eighteen years last past, has been a corporation duly organized and existing under and by virtue of the law-*laws* of the state of Minnesota, with authority to construct, own, maintain and operate stockyards at the city of South St. Paul in said state for the purposes, among other things, of receiving, selling, feeding, watering and caring for livestock of all kinds and with authority to charge and receive compensation for such services.

2. That in the year 1887, your petitioner constructed at large expense, and has since enlarged and improved, and still maintains and improves, at the city of South St. Paul, Minnesota, stockyards which have cost a very large sum of money, and are now in operation and that large packing houses have been built and are still in existence and in operation at South St. Paul and adjoining said stockyards, which said packing houses offer a large market for the stock received and handled in said stockyards.

394 3. That said Stockyards Company was formed and said expenditures in the construction of its yards were made because of the large and increasing number of livestock of various kinds that were raised in the territory naturally tributary to said South St. Paul, which said stock should be killed and manufactured into their commercial products as near to their place of production as sufficient markets could be established to and from which transportation facilities were adequate.

4. Your petitioner avers that the defendant Railway Companies are engaged in the transportation of live stock from the territory west of Chicago, as far as the Pacific Ocean and in connection with other lines from various points north and west of said South St. Paul and that said defendants have for a long time, and now are making and giving undue and unreasonable preference and advantage in the carriage of livestock from points west of Chicago to said Chicago, to the injury and prejudice of the said city of South St. Paul, Minnesota, and to the injury and prejudice of your petitioner, and subjecting

your petitioner and said city of South St. Paul and the livestock traffic thereof to undue and unreasonable prejudice and disadvantage, in that they charge, collect and receive for the transportation of live stock in car loads on the respective lines of road of said defendants and their connections from all points north and west of St. Paul, Minnesota, to said South St. Paul, a much greater proportional rate for the distance carried than the rate charged and collected by said railroad companies from said South St. Paul to the city of Chicago, and that a large and undue portion of the rate charged for shipment of livestock originating north and west of St. Paul to the city of Chicago, is demanded and received for the portion of the way ending at South St. Paul and a very small portion of said rate is charged for the distance from said South St. Paul to the city of Chicago, all of which your petitioner alleges is contrary to the provisions of the Act of Congress entitled "An Act to Regulate Commerce."

395 5. Your petitioner denies that the rates charged, collected or received by the defendant carriers for the transportation of livestock from points in Iowa, Minnesota and Wisconsin, to the city of Chicago are unjust or unreasonable as compared with the rates to said South St. Paul from said points in said states so as to subject the city of Chicago or any persons doing business there to any prejudice or disadvantage.

6. Defendant admits that it is informed and believes that the allegations of the bill of complaint made in paragraphs 1 to 6 inclusive, are substantially true, except as set forth in paragraph 8 of this answer, and as to the allegations of paragraphs 7 and 8 of the complaint, your petitioner has no information sufficient to form a belief, and therefore denies the said allegations.

7. As to the allegations contained in paragraph 9 of the bill of complaint your petitioner denies that the adjustment and relation of the rates between live cattle and live hogs on the one hand and on the dressed or prepared products of such cattle and hogs on the other hand as the same are now and have been for several years last past maintained, has created an undue and unreasonable prejudice, and denies that the same operates as an unjust discrimination in violation of Sections 1, 2, or 3 of said Act to Regulate Commerce, whether as alleged in the complaint or otherwise.

8. Your petitioner further avers that it denies that the Chicago Livestock Exchange mentioned in the bill of complaint is an incorporated association, but on the contrary it alleges that it is informed and believes that said Chicago Livestock Exchange was at the date of the filing of the petition with the complainant, which is set forth in the complaint herein, and has ever since been, an unlawful combination of persons in restraint of trade and commerce in the State of Illinois, and that said Chicago Livestock Exchange was

396 organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

Defendant further alleges that said Livestock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission, or in the subject

matter thereof, and that no complaints were made or have been made to any of said defendant railway companies, or to the complainant, by shippers of live stock of the rates complai-ed of in said petition or of the adjustment of rates involved therein; and your petitioner avers that the said Chicago Livestock Exchange was not authorized under the Act of Congress entitled "An Act to Regulate Commerce" to file the complaint mentioned, and the filing thereof gave no jurisdiction whatever to the said Interstate Commerce Commission and its order was without jurisdiction and was without authority, and is null and void.

9. Your petitioner further alleges that the rates on livestock in territory in the states of Iowa, Minnesota and Wisconsin tributary to said South St. Paul market, and the rates from points between said South St. Paul and Chicago, are so adjusted and so arranged and so operated under by the defendant railway companies as to favor the city of Chicago, and so as to work an unjust discrimination to the said City of South St. Paul and your petitioner, so as to give an unreasonable preference to the said city of Chicago and undue and unreasonable advantage to that city over the city of South St. Paul.

10. Your petitioner further shows that if an order and decree should be made by this honorable Court compelling the defendant railway companies to reduce their charges on livestock from said South St. Paul to Chicago, the rates charged for carrying livestock
397 from points in the states of Iowa, Wisconsin and Missouri tributary to said South St. Paul to said city of South St. Paul should be reduced in proportion; otherwise the said decree would operate as an undue and unjust preference in favor of shipments to the city of Chicago and be to the great prejudice of the city of South St. Paul, and would be destructive of the property of your petitioner and of the market which has been built up and maintained for many years at said South St. Paul.

Wherefore, your petitioner prays that the complainant take nothing by its said action, and that the same be dismissed, and if your Honor shall make an order and decree as prayed in the complaint, or any order and decree requiring the reduction of the livestock rate between said South St. Paul and the city of Chicago, that the rates in all territory tributary to said city of South St. Paul lying between said South St. Paul and the city of Chicago be reduced proportionally, and that a readjustment of the rates charged by the different railroad companies from the points in the territory tributary to South St. Paul be also at the same time ordered redu-ed so as to render said rates just and reasonable and to prevent an unjust discrimination that would otherwise exist in favor of said city of Chicago; and your petitioner prays for such order and decree as shall be just and proper in the premises.

ST. PAUL UNION STOCKYARDS COMPANY,
By M. D. FLOWER, *President*,
DAVIS, KELLOGG & SEVERENCE,
Solicitors for Intervenor.

C. A. SEVERENCE, *Of Counsel.*

STATE OF MINNESOTA, *County of Ramsey:*

I, M. D. Flower, came before me personally, and being duly sworn, doth say that he is the president in the above entitled action; that the foregoing is true of his own knowledge, except as
398 to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

M. D. FLOWER.

Subscribed and sworn to before me this 13th day of September A. D. 1905.

[SEAL.] GUY CHASE,
Notary Public, Ramsey County, Minn.

(Endorsed:) Filed Sept. 15, 1905, Marshall E. Sampsell, Clerk.

399 And on to-wit: the fifteenth day of September, 1905, came The Sioux City Stock Yards Company by its solicitor and filed in the clerk's office of said court its certain Petition in words and figures following to-wit:

Petition of the Sioux City Stock Yards Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

In Equity. No. —.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY, Defendant.

Petition.

To the Honorable the Judges of the Circuit Court of the United States, for said District:—

The petitioner, The Sioux City Stock Yards Company, a corporation, hereinafter referred to as the Stock Yards Company, by leave of Court first had and obtained to intervene herein, respectfully represents to your Honors:—

1. That it is and has been for many years a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, with authority, by reason thereof, to construct, own, maintain and operate Stock Yards at the City of Sioux City,
400 Iowa, for the purpose of receiving, selling, fee-ing, watering and otherwise caring for all kinds of live stock delivered to it and awaiting transportation or sale or otherwise, and to do all other acts appertaining to the conduct of a general Stock Yards business and to receive compensation for all such services.

2. That the said Stock Yards Company is the owner of Stock Yards at Sioux City, Iowa, as well as of extensive buildings and improvements, including railroad and switching facilities appertaining thereto, all of which have been constructed and developed at an expense of several millions of dollars. That said Stock Yards and other facilities appertaining thereto were constructed, and have been and are developed in response to the necessity and demand for a live stock market at Sioux City. That the live stock industry in the Western States, particularly in the States of Iowa, Minnesota, Missouri, South Dakota, Nebraska, Kansas, and States west, and the interests of all people engaged directly or indirectly in such industry, will be greatly subserved and prospered by the creation and building up of extensive live stock markets near and convenient to the extensive grass-producing countries, as well as near and convenient to the corn-producing country. That the interest and prosperity of the live stock industry in the west demands that the producers of live stock in small and moderate quantities be educayed and induced to market their own stock in car load quantities at large markets, and that this can only be successfully accomplished by the creation and maintenance of such markets within a convenient distance from the localities where such live stock is produced. That in response to the needs of the live stock industry and those engaged directly or indirectly therein, there have been erected and are being maintained at Sioux City, a large number of packing houses, and a live stock market exists, which, if not injured and suppressed by unfavorable railroad rates, will fulfil the demand of the territory naturally and fairly tributary to said City and market.

401 3. That the said Stock Yards Company was induced to purchase maintain and develope its said properties because of the demands and considerations hereinafter referred to, as well as for reasons of humanity requiring that live animals be killed and manufactured into their commercial products as near the place of their production and growth as markets of sufficient magnitude could secure proper competition and trade, and transportation could be established.

4. That the defendants, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Illinois Central Railroad Company have lines of railroad entering Sioux City and are engaged in carrying live stock and its products between Sioux City and Chicago; and the said Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Chicago & Northwestern Railway Company, the Illinois Central Railroad Company, and the Chicago, Milwaukee & St. Paul Railway Company, are engaged in carrying live stock and its products between points west of Sioux City and the States of Nebraska, South Dakota, North Dakota, and from points in Minnesota to Chicago; and said railroads have respectively for a long time been making and giving undue preference and advantage to the live stock market at Chicago, and to the City of Chicago, and subjecting this

intervenor, and the City of Sioux City, and tributary territory, and the live stock traffic thereof, to undue and unreasonable prejudice, in that they each charged, collected and received from the transportation of live stock in car loads on their respective lines from all points in Iowa, Minnesota, North Dakota, South Dakota and Nebraska, to Sioux City, much greater proportionate rates than for the same or like service therefrom in the transportation of live stock from the same points to the City of Chicago, contrary to the provisions of the act of Congress entitled "An Act to Regulate Commerce."

5. That the defendant, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Chicago & Northwestern Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, so having lines of railroad extending into the States of Ne-
402 braska, South Dakota, North Dakota and Minnesota, which states furnish large amounts of live stock which is carried by said railroads to Sioux City, and through said City to Chicago, to be sold to packers at Chicago, for the purpose of inducing shippers of stock to ship the same to Chicago, charge and receive a much greater proportionate compensation for the transportation of live stock in car loads to Sioux City, to be there sold, than they charge for the same service in carrying live stock through Sioux City to Chicago, or to Sioux City to re-ship to Chicago, thereby giving an undue and unreasonable preference to the live stock market at Chicago, and to the City of Chicago, and subjecting intervenor, and the City of Sioux City, and the live stock market in said City, to an undue and unreasonable prejudice and disadvantage, contrary to the provisions of said act of Congress.

6. That all of said Railway and Railroad Companies, the lines of which extend to Sioux City in the territory between Sioux City and Chicago give an undue and unreasonable preference and advantage to the shipping of live stock to Chicago from points tributary to Sioux City, and within one hundred and fifty miles thereof, by furnishing special trains and schedules for the shipment of live stock from such points, by reason of which the said stock is delivered on the market at Chicago in as short a time as in Sioux City, and that by reason of such undue and unreasonable preference and advantage, a large and unnatural amount of live stock is shipped to Chicago and there sold, and that a large proportion of such stock so shipped to Chicago would, with reasonable and equal facilities, be shipped to and slaughtered at Sioux City.

7. This intervenor denies that the rates charged for the shipment of live stock from points west of Chicago to Chicago are unreasonably high as compared with the rates charged on the transportation of live stock from points on the Missouri River and
403 elsewhere west of Chicago to Chicago, and denies that the City of Chicago, or the live stock market thereat, is subjected to any prejudice or disadvantage by reason of undue and unreasonably high rates charged from such points west of Chicago to Chicago on live stock

8. And for as much as this proceeding in the main is a contro-

versy between the complainant, representing the live stock market and live stock product market interests at the City of Chicago on the one hand, and your intervenor, and like interests at the City of Sioux City, and other points on the Missouri River similarly situated, on the other hand, your intervenor is advised that it is necessary to its protection, and to the protection of such interests in the City of Sioux City, that it should be permitted to intervene and become a party hereto, to the end that it may have notice and an opportunity to be heard in behalf of its interests and the interests of the Sioux City Live Stock Market in all proceedings which may be taken herein.

Wherefore, petitioner prays that it be permitted by your Honors to intervene in this cause and be made a party hereto, and have notice of all proceedings taken herein, and that this petition be taken, until further notice of action, as petitioner's intervening petition and answer to complainant's bill, and that such order and decree be finally made in said cause as may be just and equitable, and as will protect the rights and interests of those engaged in the live stock business at Sioux City, and in the territory tributary thereto.

MILCHRIST & SCOTT,
Solicitors for Sioux City Stock Yards Company, Intervenors.

Of counsel:
WM. MILCHRIST.

(Endorsed:) Filed Sept. 15, 1905, Marshall E. Sampsell, Clerk.

404 And on to-wit: the eighteenth day of September, 1905, came the Railroad and Warehouse Commissioners of the State of Minnesota by their solicitors and filed in the clerk's office of said Court their certain petition in the words and figures following to-wit:

Petition of Railroad and Warehouse Commissioners of the State of Minnesota.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

The petition of the Railroad and Warehouse Commissioners of the State of Minnesota respectfully shows:

1. That Ira B. Mills, Charles F. Staples and William E. Young are duly elected and qualified Railroad and Warehouse Commissioners of the State of Minnesota and constitute the Railroad and Warehouse Commission of said State, that said Railroad and

Warehouse Commission was created and its powers and duties defined by Chapter 10 of the General Laws of the State of Minnesota for the year 1887; and the several amendments to said chapter; that under and by the provisions of Chapter (10) ten of the General Laws of Minnesota for the year 1887 as amended by Chapter (106) one hundred six of the General Laws of Minnesota for the year 1891, Chapter, (67) sixty seven of the laws of said state for 1897, it is made the duty of said Commission upon complaint of any person, firm, corporation or association, that, if any part of the tariff of rates fares, charges or classifications of any common carrier filed with the Commission between points wholly within the state of Minnesota are unreasonable, to forward a copy of said complaint to said
405 carrier so complained of, and require it to satisfy the said complaint or answer within a reasonable time to be fixed by the Commission, and providing, that if said complaint is not satisfied, that the Commission proceed to a hearing and investigate the reasonableness of the rates complained of, provided, that the Commission may at any time, although no complaint has been filed with it, proceed upon its own motion to investigate the tariff of rates, fares, charges and classifications or any part thereof filed and published by any common carrier, and, if in either proceeding, upon the evidence, the tariff of rates, fares, charges and classifications are found to be unjust, unreasonable or unequal, the Commission shall by its report in writing state wherein they are unequal or unreasonable, and shall make a tariff of rates, fares, charges and classifications which shall be substituted for the tariff complained of. Such tariff of rates, fares, charges and classifications so made by the Commission shall be deemed and taken in all courts of the State of Minnesota as *prima facie* evidence that the tariffs of rates, fares, charges and classifications so made are equal and reasonable. That the State of Minnesota is a large producer of cattle, sheep and hogs, and that there is a market for the sale of said cattle, sheep and hogs at South St. Paul and at other places in the State of Minnesota, and that there are packing houses at South St. Paul and at other points in the state, where cattle sheep and hogs are slaughtered and packed.

2. Your petitioners say that they do not know and can neither admit nor deny the averments of the first paragraph of the complainant's petition as to the incorporation and offices of the defendants, but aver that they are informed and believe that said
406 various defendants are common carriers engaged in the transportation of persons and property by railroad under joint through rates, and as members of continuous through lines between points in different states of the United States, and that they have been and are engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, from Kansas City, Missouri, St. Joseph, Missouri and Omaha, Nebraska, on the Missouri River, and from South St. Paul in the state of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago and to other eastern points, and that in connection with other lines of railroad the said defendants are also engaged in the

transportation of cattle and hogs originating on lines west of the Missouri River and west and northwest of St. Paul to Chicago and other eastern points, and that in respect to such transportation the said companies have been, and are subject to the provisions of the Act of the Congress of the United States entitled "An Act to Regulate Commerce" approved February 4, 1887, as amended.

3. Your petitioners admit that on or about the 5th day of April, 1902, the Chicago Livestock Exchange did file with the complainant, Interstate Commerce Commission a complaint against the said various railroad companies, and that Exhibit A attached to the complaint herein is a copy thereof but your petitioners on information and belief deny that said Chicago Livestock Exchange is an incorporated association, but on the contrary allege that they are informed and believe that said Chicago Livestock Exchange was at the date of the filing of said petition with said Interstate Commerce Commission and ever since has been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states, and in restraint of trade and commerce in the state of Illinois, and that said Chicago Livestock Exchange was organized
407 pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the statutes of the state of Illinois, and further allege that said Livestock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof.

4. Your petitioners aver that by leave duly obtained they were permitted to intervene in said proceeding before said complainant Interstate Commerce Commission, and that they filed therein an answer in intervention, and opposed in said proceedings the making of the order against said various railroad companies prayed in the said complaint so filed with said Interstate Commerce Commission, and opposed the making of the order of the Commission which is attached to the complaint herein as Exhibit Q.

5. Your petitioners admit that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys and your petitioners also appeared; and your petitioners also admit that testimony was taken at such hearing in behalf of the parties to said proceeding; that argument was had, and that on or about the 7th day of January, 1905, the said Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that Exhibit P, attached to the petition of the complainant herein is a copy of said report, and further admit that on or about the said 7th day of January, 1905, the said complainant, Interstate Commerce Commission formulated
an order and notice based upon said findings and determina-
408 tion, and that said Exhibit Q to complainant's petition is a copy thereof.

6. Your petitioners deny that the charges maintained by said various carriers for the transportation of live cattle and live hogs on

the one hand, and their charges for the transportation of dressed or prepared products of such cattle and hogs on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections 2 and 3 of the said Act to regulate commerce, or otherwise, and deny that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section 1 of said Act to regulate commerce, whether as alleged in the petition or otherwise.

7. Your petitioners further say that the said order so made by said Interstate Commerce Commission and attached to the petition of the complainant herein as Exhibit Q, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission, and is violative of the rights of the said carriers and of the shippers of livestock to the markets for the same.

8. That the rates existing at the time of the filing of the petition in this proceeding with the Interstate Commerce Commission and as said rates now exist from Minnesota and Iowa territory to South St. Paul do not discriminate against Chicago in favor of South St. Paul or any other market, but said rates are much more favorable to Chicago than to South St. Paul and discriminate against South St. Paul in favor of Chicago; that the rates that existed at the time of the filing of said petition and that now exist between St. Paul and Chicago on packing house products or provisions, are rela-
409 tively just and reasonable with the rate on livestock from Minnesota markets to Chicago, Sioux City and other markets outside the state of Minnesota and that Chicago and other markets outside of the state of Missouri are receiving, and at all times during the existence of the rates complained of, have received, a just and fair proportion of the livestock that is raised in and shipped from the state of Minnesota and points in Iowa and other states tributary to South St. Paul.

9. That the rates made by the said carriers for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River, from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been made the subject of investigation by the said Interstate Commerce Commission, were made by reason of extreme competitive conditions existing at said Missouri River points and at South St. Paul in respect to the transportation of such products, and that at the time of the filing of said complaint by said Chicago Livestock Exchange before said Commission, there were in existence and ever since have been in existence, proportional rates on all livestock originating west and northwest of St. Paul and shipped to Chicago and other points east thereof, which are no higher than the rates on the products of livestock; and substantially all of the live cattle and hogs shipped from the Missouri River to

Chicago and points east of Chicago and from South St. Paul to Chicago and points east of Chicago are shipped on such proportional rates, which are not, and have not been in excess of the rates
410 charged for the transportation of the dressed product of cattle and hogs from South St. Paul to Chicago and points east thereof.

That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha in the state of Nebraska, Sioux City in the state of Iowa and South St. Paul in the state of Minnesota and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the livestock raised in the states west of the Missouri River and west and northwest of said South St. Paul and in the country round about and adjacent to said towns and that large stockyards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all the facilities required for the sale and handling of cattle and hogs and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of such market towns has been and now is of great advantage to the stockgrowers throughout said territory, furnishing them a near market for their livestock, and also giving them the benefit and advantage of a home market as compared with the disadvantages of shipping their livestock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for the disposition and sale of their livestock; that said market towns and particularly said South St. Paul in the state of Minne-
411–434 sota, have had and now have substantially as good railroad facilities as Chicago, and have railroads with their connections extending to the ports of the Gulf of Mexico, and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points, and particularly at South St. Paul, a home market for the handling and sale of livestock, from which the country around and adjacent to said cities and west of the Missouri River and west and northwest of St. Paul, has derived great advantages and upon which said portions of the country are now dependent in a great measure for their prosperity; that the stock growers and other persons interested in the maintenance and development of such market towns other than Chicago, and particularly in the maintenance and development of South St. Paul, and interested in the growth of home markets throughout all the said territory, have protested and are protesting and on their behalf your petitioners as such Railroad and Warehouse Commissioners of the state of Minnesota, protest, against any change being made in the relation between the said rates upon livestock and upon the products thereof.

CHARTS

TOO

LARGE

FOR

FILMING

Your petitioners as such Railroad and Warehouse Commissioners pray that they may be permitted to intervene in this cause, and that the foregoing petition may be considered as an answer in intervention herein; and your petitioners pray that this action may be dismissed, and the complainant Interstate Commerce Commission be denied any relief in the premises.

IRA B. MILLS.
CHARLES F. STAPLES.
WILLIAM E. YOUNG.

IRA B. MILLS,
Solicitir for Intervenors.

(Endorsed:) Filed Sept. 18, 1905, Marshall E. Sampsell, Clerk.

* * * * * * *

435 And afterwards to-wit: on the fourteenth day of October, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of October 14, 1905.

27723 & 27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Now again come the parties by their solicitors and the arguments of counsel being now heard and concluded, and the Court not being sufficiently advised in the premises takes time to consider.

436 And on to-wit: the twentieth day of November, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain Opinion by Judge Bethea in words and figures following to-wit:

(Here follows opinion, marked pages 436½ and 437.)

438 And on the same day to-wit: the twentieth day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Decree of November 20, 1905, Dismissing Petitions of Interstate Commerce Commission.

27723.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously Sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

439 27829.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously sued as THE OMAHA, KANSAS CITY & EAST-

ERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY, Original Defendants; SIOUX CITY STOCK YARDS COMPANY; ST. JOSEPH STOCK YARDS COMPANY; ST. PAUL UNION STOCK YARDS COMPANY; RAILROAD & WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; T. M. SINCLAIR & COMPANY, LIMITED, and THE UNION STOCK YARDS COMPANY OF OMAHA, Intervenors.

440 Ordered by the Court that the petitions of the Interstate Commerce Commission be, and they are hereby dismissed with costs.

441 Be it remembered that on this day to-wit: the twelfth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of January 12, 1906, *Leave to File Substituting Petition.*

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

It appearing that the original petition filed herein on the 29th day of April, 1905, has been mislaid or lost and at this date cannot be found,

It is thereupon ordered that leave be and the same is hereby given said petitioner to file instanter a substituted copy of said petition *nunc pro tunc* as of April 29th, 1905.

442 Be it remembered that on this day to-wit: the twelfth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of January 12, 1906, *Leave to File Substituted Petition.*

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

It appearing that the original petition filed herein on the 17th day of July, 1906, has been mislaid or lost and at this date cannot be found.

It is thereupon ordered that leave be and the same is hereby given said petitioner to file instanter a substituted copy of said petition *nunc pro tunc* as of said 17th day of July, 1905.

443 And afterwards to-wit: on the fifteenth day of January, 1906, came Interstate Commerce Commission by C. B. Morrison, United States Attorney, L. A. Shaver, its solicitor and S. H. Cowan, Special Counsel under the direction of the Attorney General of the United States and filed a certain Petition praying an appeal to the Supreme Court of the United States Which said Petition is in the words and figures following to-wit:

Petition for Appeal.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

No. 27723.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

SAME
vs.
SAME.

Consolidated Causes.

Petition for Appeal.

The Interstate Commerce Commission, being a bureau or department of the government of the United States, by C. B. Morrison, United States Attorney, and by L. A. Shaver, its solicitor and S. H. Cowan, Special Counsel, under the direction of the Attorney General of the United States, represents that in the final decree or order of said circuit court, in the above stated cases, rendered on the 20th day of November, 1905, there is manifest error to its injury; and therefore it prays for an order granting an appeal from said decree
444 to the Supreme Court of the United States.

C. B. MORRISON,
United States Attorney.
L. A. SHAVER,
Solicitor for Complainant.
S. H. COWAN,
Special Counsel.

(Endorsed:) Filed Jan. 15, 1906, Marshall E. Sampsell, Clerk.

445 And on the same day to-wit: the fifteenth day of January, 1906, came Interstate Commerce Commission by its solicitors and filed in the clerk's office of said Court its certain Assignment of Errors, in words and figures following to-wit:

Assignment of Errors.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

No. 27723.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

SAME
vs.
SAME.

Consolidated Causes.

Assignment of Errors.

And now comes the Interstate Commerce Commission by C. B. Morrison, United States Attorney, and L. A. Shaver, its solicitor, and S. H. Cowan, Special Counsel, and say that in the decree rendered by said circuit court in the above entitled causes on the 20th day of November, 1905, and in the record and proceedings in said causes there is manifest error in this, to-wit:

1. Said Court erred in decreeing that the bill of petition of the Interstate Commerce Commission be dismissed.

2. Said court erred in not granting the relief prayed for in the said bill or petition of the Interstate Commerce Commission.

3. Said court erred in not rendering a decree for the enforcement of the order of said Commission.

4. Said Court erred in holding that the rates on live stock involved in said causes are reasonable in themselves.

446 5. Said Court erred in holding that the rates on the products of live stock involved in these causes were remunerative prior to their reduction.

6. Said Court erred in holding in effect that said rates on the products of live stock as reduced are remunerative and lawful rates.

7. Said Court erred in holding that the cost of carrying live stock is greater than that for carrying dressed meats and packing-house products.

8. Said Court erred in holding that the rates in question given to the packers at the Missouri River and St. Paul on their products were the result of competition.

9. Said Court erred in holding that the alleged competition set up in these causes justified the reduction of the rates on the products below those on the live stock.

10. Said Court erred in holding that the alleged competition set up in these causes was *bona fide* and such as in contemplation of law can justify preferences or prejudices otherwise undue.

11. Said Court erred in holding that the competition alleged in these causes can be set up as a defense under section 3 of the Act to regulate commerce.

12. Said Court erred in holding that the lower rates on the products of live stock than on the live stock has worked no injury to the shippers of the latter.

13. Said Court erred in holding that the present rates complained of in these causes are "reasonably fair to Chicago and to the shippers of live stock."

14. Said court erred in holding that the rate of twenty cents per one hundred pounds charged for transportation by defendants of dressed meats and packing house products from Kansas City,
447 St. Paul, South Omaha, Sioux City and other Missouri River points involved to Chicago, while the rate of twenty three and one half cents was, and is charged on cattle, hogs and sheep from the said Missouri River points to Chicago, did not, and does not, constitute an undue and unreasonable preference and advantage in favor of dressed meat and packing house products and the shippers of the same, and that said rate adjustment did not, and does not, subject such live stock, and the shippers thereof and the live stock market at Chicago to an undue and unreasonable prejudice and disadvantage in violation of Section Three of the Act to Regulate Commerce.

15. Said court erred in holding that the *prima facie* case made by the findings of the commission had been overcome by the evidence offered before the Court, and in effect overruling the following ultimate findings of fact made by the commission as follows:

"Based upon the foregoing, we make specific findings as follows: The discrimination against the transportation of live stock to Chicago from the shipping points in question, brought about by defendants' action in establishing and putting in force upon the products of live stock rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock between the same points injured the live stock market of Chicago and those interested therein, is not justified by difference to defendants in the cost of transportation, and is not otherwise justified, and therefore subjects the traffic in live stock and the Chicago live stock market and those interested therein, including complainant to undue and unreasonable prejudice and disadvantage and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage."

16. The said Court erred in holding that the rate of twenty five cents per one hundred pounds on cattle, and twenty seven cents per one hundred pounds on hogs from South St. Paul and St. Paul to Chicago was just and reasonable.

17. The said Court erred in holding that the rate of fifteen
448 and seven tenths cents per one hundred pounds on packing house products and seventeen cents on dressed meat from St. Paul to Chicago, while the rate on cattle was twenty five cents and on hogs twenty-seven cents did not constitute an undue and unreasonable preference and advantage to dressed meat and packing house products and the shippers thereof, and did not subject cattle and hogs and the shippers thereof to an undue and unreasonable preference and disadvantage.

18. The said court erred in holding that the lower rate from Omaha, Des Moines, Marshalltown and Cedar Rapids, Iowa, to Chicago, on dressed meat and packing house products, than is the rate on cattle and hogs from the said points to Chicago, did not constitute an undue and unreasonable preference and advantage to the dressed meat and packing house products, and the shippers thereof, and did not subject cattle and hogs, and the shippers thereof, to an undue and unreasonable prejudice and disadvantage.

19. The said court erred in holding that the lower rates on packing house products and dressed meat from the Missouri River points in question, and from interior points in Iowa, than is charged on live stock shipped locally from the said points to Chicago, did not create in favor of dressed meats and packing house products and the shippers thereof an undue and unreasonable preference and advantage, and did not subject the live stock market at Chicago and those interested including complainant, to an undue and unreasonable preference and disadvantage.

20. The court erred in finding that:

"All the witnesses agreed in the showing that the cost of service in proportion to the value of both kinds of commodities was greater in carrying live stock."

21. The court erred in finding that it was:

"Substantially agreed by the witnesses that the risk of carriage, notwithstanding the double value of fresh meats, was not as
449 great in carrying fresh meats and packing house products as in carrying live stock."

22. The court erred in finding that the witnesses:

"All agreed that competition was the greatest factor in determining a rate.

23. The court erred in finding that:

"The average Iowa rate to Chicago was twenty one cents."

24. The court erred in finding that the Chicago market is not injured by the present rate and basing that upon the finding that:

"(The) evidence tends to show that a majority of the cattle within 150 miles from the Missouri River and St. Paul went to Chicago rather than to the Missouri River and southeast from St. Paul upon the present rates."

25. The said court erred in finding that the Chicago market fluctuated from five cents to fifty or seventy five cents in a day.

26. The said court erred in finding that:

"The evidence shows that the defendant railroad companies pay out a much larger amount in damages for losses arising from the

carriage of live stock than they do for losses arising from the carriage of dressed meats and packing house products, in proportion to the value of the product carried and more in damages per car regardless of the value.

27. The said court erred in its holding based on the quotation next above that:

"The result is that the value of the service is not such an important factor in this kind of a case as it is considered to be in ordinary cases."

28. The said court erred in finding that:

"Other railroads running south to the Gulf of Mexico also competed more or less for said business."

that is the business for transporting packing house products and dressed meats, and in taking that into consideration.

29. The said court erred in finding; that the Chicago Great Western Railway Company was the longest route from Chicago to the Missouri River points and in holding that:

"The rates were not made voluntary, but from necessity arising from competition, the necessity being that of carrying the goods at the lower rate or losing the business to which the officers of
450 said companies though they were entitled. This cutting of the rate by the Chicago Great Western Railway Company was not the origin of competition" and in basing its decision thereon.

30. The said court erred in holding in effect that because the railway companies did not make a lower rate on live stock because they did not see fit to do so as a result of competition between themselves justified the roads in making a lower rate on packing house products and dressed meats without violating the third section of the act to regulate commerce, prohibiting undue preference as between the two classes of commodities.

31. The said court erred in finding that:

"The only places where the opportunities for competition existed as to live stock the same as to packing house products were immediately at the Missouri River points and St. Paul."

32. The said Court erred in finding that:

"The present rates have not materially affected any of the markets, prices, or shipments; that they are reasonably fair to Chicago and to the shippers; that the shipments of live stock from points between Chicago and the Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri River and St. Paul, and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock."

33. The court erred in finding that:

"That the welfare of the public, including the shippers consumers, and all localities and markets, does not seem to be materially affected by the present rates."

34. The said court erred in finding that; the law is intended only

"To prohibit unjust discriminations in the rendition of like service under similar circumstances and conditions."

35. The said court erred in finding that:

"Any fact which produces an inequality of condition and a change of circumstances justifies and inequality of charge." And in applying that mistaken principle in the decision of this case.

451 36. The said court erred in finding that:

"The cost of service to the carrier would be an ideal theory, but is not practical," and in giving effect in its decision to its findings of fact that the cost of the carriage is greater in case of live stock than in dressed meats and packing house products.

37. The said court erred in finding that:

"The amount of the product or the commodity in the hands of a few persons to ship or compete for, entitles such shippers to the lower rate of freight than one having a less quantity."

and in applying that principle to this case where the rates are based upon the unit of a car load.

38. The said court erred in finding that:

"In every case the Supreme Court has held that competition may be controlling," and that such competition applies to section 3 of the Act to Regulate Commerce with respect to preferences and discriminations as between different descriptions of traffic and the shippers thereof.

39. The said court erred in its construction of the decision of the Interstate Commerce Commission in holding that:

"The Interstate Commerce Commission, in its opinion, considered the facts as to competition and found they did not control the fixing of rates. Its opinion and the concurring opinion of Commissioner Knapp, show, however, that the majority of the Commission acting in this case (Fifer and Prouty) thought that it was not a case to which competition applied."

40. The said court erred in finding that: the same principle must apply in determining the question of undue and unreasonable preference as between different descriptions of traffic as apply to undue and unreasonable preference as between different places when it is charged that the fourth section of the Act to Regulate Commerce is violated.

41. The said court erred in holding that the Chicago Great Western Railway Company did not begin the competition and that it was immaterial if it did, and in holding that it was the duty of the officers of that railroad company to get business in the inter-

452 est of its stockholders to accomplish which that it had the right to reduce the rates on dressed meats and packing house products by the contract which it made with the Missouri River packers without being subject to the requirements of section 3 of the Act to Regulate Commerce, prohibiting undue preference to any particular description of traffic or shippers thereof.

42. The said court erred in holding that the evidence shows that

"this carrier" (C. G. W. Ry. Co.) must reduce the rate or lose the business.

43. The said court erred in holding that competition was:

"Limited to the live stock driven into the Missouri River points and St. Paul in determining whether that commodity is therein entitled to the same rate as packer's product shipped from those same points."

44. The said court erred in holding that the evidence shows that in substantially all cases the factor of competition alone controls the rate, and in holding that the Supreme Court has held that competition may be controlling, and upon that mistaken theory in finding that:

"Upon a consideration of all the evidence the court holds that the *prima facie* case made by the findings of the Commission has been overcome by the evidence offered before the court."

C. B. MORRISON,
United States Attorney.
F. A. SHAVER,
Solicitor for Complainant.
S. H. COWAN,
Special Counsel.

(Endorsed:) Filed Jan. 15, 1906. Marshall E. Sampsell, Clerk.

453 And on the same day to-wit: the fifteenth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of January 15, 1906, *Allowing Appeal.*

27723.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

SAME
vs.
SAME.

Consolidated Causes.

In these causes, the Interstate Commerce Commission, by C. B. Morrison, United States Attorney, and by L. A. Shaver, its solicitor, and S. H. Cowan, Special Counsel, under the direction of the Attorney General of the United States, having made its application in writing for an appeal from the final decree therein, rendered on the 20th day of November, 1905, to the Supreme Court of the United

States, and the said Interstate Commerce Commission being a department of the government of the United States, and it appearing that the matter in dispute in said causes exceeds the sum of five thousand dollars ($5,000) exclusive of costs, it is, therefore, ordered that said appeal be, and the same is hereby granted and made returnable on the thirteenth day of February, A. D. 1906.

454 And on to-wit: the second day of February, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

FRIDAY, *February 2nd*, 1906.

Present: Honorable Solomon H. Bethea, District Judge.

Gen. Nos. 27723 & 27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.,

and

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Causes.

On motion of the United States Attorney, appearing for said petitioner, and upon good cause shown,

It is ordered that the time to file the transcript of record in the Supreme Court of the United States be, and the same is hereby, enlarged thirty days from the 13th of February instant.

455 And afterwards to-wit: on the ninth day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

FRIDAY, *March 9th*, 1906.

Present: Honorable Solomon H. Bethea, District Judge.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

On motion of Mr. L. A. Shaver, one of the solicitors for the petitioner herein, being represented by Mr. Francis G. Hanchett, and upon good cause shown,

It is ordered that the time to file transcript of record in the Supreme Court of the United States be, and the same is hereby, enlarged thirty days from the 12th day of March instant.

456 And on to-wit: the fifteenth day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of March 15, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

On motion of the United States District Attorney and upon consent of Mr. L. A. Shaver, solicitor for the Interstate Commerce Commission, and upon the request of Mr. S. H. Cowan, counsel for said

Commission, leave is hereby given Mr. L. A. Shaver to withdraw from the files of said consolidated causes the record of the proceedings had before the Interstate Commerce Commission at Chicago in the case of The Chicago Livestock Exchange *vs.* The Atchison, Topeka & Santa Fe Railway Company *et al.*, comprising two volumes introduced in evidence on the trial of said causes and filed in the office of the Clerk of this court on the 14th day of October A. D. 1905, for the purpose of having the same printed at Washington, two copies at least of said printed record to be sent to the Clerk
457 of this court, one to be included in the transcript now being prepared on Appeal to the Supreme Court of the United States, the other to be filed as a part of the record in said causes and, that as soon as such printed copies are made the original manuscript shall be returned to the files subject to the further order and direction of the Court.

458 And afterwards to-wit: on the twentieth day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge appears the following entry to-wit:

Order of March 20, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Causes.

Upon motion of Mr. Francis G. Hanchett, Assistant United States District Attorney, and upon request of Mr. L. A. Shaver, solicitor for said petitioner, Mr. Edward Baxter, appearing for said defendants and consenting thereto, leave is hereby given to withdraw from the files the original testimony and exhibits in said consoli-
459 dated causes for the purpose of having the transcript on appeal to the Supreme Court printed at the Government printing office in Washington under the direction of the Department of Justice; the originals to be returned intact to the Clerk's office of this court, together with at least four copies of such printed record, one of which to be certified by the Clerk as the transcript of the record on said appeal. Before permitting such original files to be withdrawn the Clerk will prepare an index giving the pages where the

testimony of the several witnesses appear in the record together with the place of insertion of the Exhibits and other documentary evidence introduced on the trial of said causes.

460 And on to-wit: the tenth day of April, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

TUESDAY, *April 10th*, 1906.

Present: Honorable Solomon H. Bethea, District Judge.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

It appearing to the Court from a letter from the Attorney General's office, under date of April 4th, 1906, addressed to Hon. C. B. Morrison, United States District Attorney, that it has been found impracticable to have the record on appeal to the Supreme Court in said consolidated causes printed at Washington and a copy of said printed record certified by the Clerk as the transcript on appeal to the Supreme Court as authorized by the order, entered herein in the 20th day of March, 1906, and that the Clerk will now be required to prepare and certify such transcript from the original files, testimony and exhibits remaining in his office, and a further enlargement of the time will be necessary.

461 It is thereupon ordered on motion of the United States District Attorney that the time to complete said transcript on appeal to the Supreme Court be, and the same is hereby, further extended thirty (30) days from April 12th, 1906.

462 And on to-wit: the tenth day of May, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of May 10, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

Upon motion of Ed Baxter, solicitor for certain of the defendants as of record, and upon good cause shown,

It is ordered by the Court that the clerk immediately notify each of the counsel of record in these causes to appear before this Court at the court room in Chicago on the first day of June A. D. 1906 at ten o'clock A. M. at which date the Court will settle the record in these causes, preparatory to certifying the evidence that was taken therein; and

It is further ordered by the Court that the time to file the transcript in said causes in the Supreme Court of the United States be extended until June 5th, A. D. 1906.

463 And afterwards to-wit: on the first day of June, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of June 1, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Causes.

Now on this day come the parties by their solicitors, and counsel for said petitioner enters his motion to have a copy of the testimony filed herein, signed and sealed by the trial Judge as the Certificate of Evidence taken in said causes. And the defendants, the Chicago Great Western Railway Company, represented by Mr. C. A. Severance, the Chicago, Burlington and Quincy Railway Company, represented by Mr. Chester M. Dawes and the Chicago and Northwestern Railway Company represented by Mr. S. A. Lynde, enter their objections to the signing of said certificate on the ground that the term of Court at which said causes were heard has expired, and that no order was made during the term in which the decree in said causes was entered herein authorizing said petitioner to present such certificzte of evidence in these causes, or extending the time for presenting the same to the present term of this Court and that the trial judge has no jurisdiction at this time to sign and seal such certificate of evidence.

464 And the Court having heard counsel upon said objections and being now fully advised in the premises overrules said objections, to which ruling the said defendants except.

Thereupon said Certificate of Evidence is duly signed and sealed in open court by the Hon. Solomon H. Bethea the trial judge and made the record of the proceedings, evidence, exhibits and testimony taken in said causes.

1 In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Cases.

Certificate of Evidence.

I, S. H. Bethea, one of the Judges of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, sitting in chancery, hereby certify that on the 15th day of September, A. D., 1905, and thereafter, at the regular —, 1905, term of said Court, the above entitled causes coming on for hearing before me upon the pleadings heretofore filed herein, the following proceedings were had, and the following evidence was introduced or offered:

2 Appearances.

L. A. Shaver, Esq., C. B. Morrison, United States district attorney, S. H. Cowan, Esq., in behalf of the complainant.

Edward Baxter, Esq., associate counsel for B. C. R. & N. R'y; C. St. P. M. & O. R'y; Chicago & Alton R'y; C. & N. W. R'y; C. B. & Q. R'y; C. M. & St P. R'y; C. R. I. & P. R'y; Hannibal & St. Joseph R'y; Illinois Central R. R.; Iowa Central R'y; K. C. St. J. & C. B. R'y; M. & St. L. R'y; Omaha, Kansas City & Eastern R'y, defendants.

C. A. Severance, Esq., for the Chicago Great Western R'y Co., defendant, and the St. Paul Union Stock Yards Co., intervening petitioner.

S. A. Lynde, Esq., for the C. & N. W. R'y Co., defendant.

Chester M. Dawes, Esq., for the C. B. & Q. R'y Co.

James C. Jeffery, Esq., for the Missouri Pacific R'y Co., defendant.

Charles A. Clark, Esq., for T. M. Sinclair & Co. Limited, intervening petitioner.

Milchrist & Scott for the Sioux City Stock Yards Co., intervening petitioner.

Ira B. Mills, Esq., for the Minnesota Railroad & Warehouse Commission, intervening petitioner.

F. T. Ransom, Esq., for the Omaha Packing Co., intervening petitioner.

3 The CLERK OF THE COURT: In Nos. 27723 and 27829 there is a motion of the United States District Attorney to consolidate the cases because of their being of like nature and relating to the same questions.

The COURT: Is there any objection to that motion?

Mr. BAXTER: Yes, sir, your Honor. We have just a formal objection.

The COURT: Do you desire to argue it?

Mr. BAXTER: No, sir.

The COURT: The motion is allowed. Enter the motion in those cases (addressing Clerk).

Mr. CLARK: May it please the Court, I desire to ask leave in this proceeding to file a petition of intervention for T. M. Sinclair & Co., Limited, a packing establishment at Cedar Rapids, Iowa.

The COURT: Is there any objection on the part of anybody to this intervention?

The COURT: Is there any objection to this Mr. Cowan?

Mr. COWAN: The counsel for the government believe that strictly under the law an intervention ought not to be allowed and yet the law permits defendants to allege and prove any matter that anybody else could allege and prove, and therefore from a practical standpoint we do not care to argue, but would simply like to have the benefit of an objection to the granting of the intervention and have the record so show.

4 Mr. MILLS: I desire to present the intervening petition of the Minnesota Railroad & Warehouse Commission.

The COURT: Let the order of intervention asked by Mr. Clark be entered. Is there any objection on the part of anybody to Mr. Mills' motion?

Mr. COWAN: Just a formal objection we would like to see entered.

The COURT: It may be entered.

Mr. SEVERANCE: I desire to file an intervening petition on behalf of the St. Paul Union Stock Yards Company. It is a similar petition to the one filed by Colonel Clark.

The COURT: The same order may be entered with the objection of the Commissioners' counsel.

Mr. RANSOM: I desire to ask the same leave for the St. Joseph Stock Yards.

The COURT: The same order.

Mr. MILCHRIST: Your Honor, I desire to ask the same leave in behalf of the Sioux City Stock Yards Company.

The COURT: Enter the same order. Are there any other orders? If not, what is your next step?

Mr. BAXTER: If it please your Honor, in the case which we know as the second case, I filed a plea of former suit pending in behalf of the defendants which I insist upon. I do not want your Honor to overrule the — but in case you do take such action I have an
5–31 answer here, and wish it disposed of so as to make the issue in that case in order to go on with the testimony.

The COURT: They are combined now. There isn't much question about it. What do you say about that (addressing Mr. Cowan)?

Mr. COWAN: We think the plea is not well taken. I think the plea ought to be overruled, and certainly the cases being combined there could not possibly be any reason for sustaining the plea.

The COURT: Do you say the plea ought to be overruled?

Mr. COWAN: Yes, the plea ought to be overruled and the parties required to file answers.

The COURT: Let that order be entered.

Mr. BAXTER: Please note an exception.

Mr. COWAN: An exception may be made in behalf of all the defendants and interveners.

Mr. BAXTER: I would like now to file the answer of the companies.

The COURT: Let it be filed.

Mr. COWAN: To which answers we ask that our former replication be considered as a replication to those answers. Is that agreeable?

Mr. BAXTER: Certainly.

The COURT: Now then, you are at issue, are you?

Mr. BAXTER: Yes, sir.

* * * * * * *

32 *Complainant's Evidence.*

Thereupon the Complainant, to maintain the issues upon its part, introduced and offered the following evidence.

Mr. COWAN: We offer in evidence the certified copies of the report and findings of the Commission in the first case.

Mr. SEVERANCE: Do you offer that in both cases or only one?

Mr. COWAN: I am going to offer it in both.

33 We also offer certified copies of the order of the Commission, and we offer the same in the second case.

The COURT: Is there any other evidence you expect to offer?

Mr. COWAN: In the first case we offer in evidence the original record of testimony taken by the Interstate Commission in the case before them.

Mr. SEVERANCE: We desire to make objections to these offers, of course, at the proper time, your Honor?

The COURT: Yes. You offer the original record in the first case; do you offer that in the second case, too?

Mr. COWAN: I want to consult with Mr. Shaver before I make that offer of evidence in the second case. There is no objection to its being in but there is just a question in my mind as to whether it is admissible in the second case. (Consultation.) We will make the offer of that in the second case also, so that the same evidence is offered in both cases. I presume that counsel waive the reading of this?

The COURT: If you have offered everything you want, let them object.

Mr. LYNDE: Wouldn't it be better if the offers were made separately and objections made separately? It is very confused.

The COURT: He offers in both cases the whole record taken

34 before the Commission, original evidence, reports, findings and all that. Now, what do you object to, if anything?

Mr. LYNDE: I submit for myself, your Honor, and on behalf of the Chicago & Northwestern Railway Company, I object specially to the offers, first, of the findings and report of the Commission in the first and in the second cases, for the reason that the Chicago & Northwestern Railway Company was not a party to that proceeding, although named as such.

As to the record, the offer of the evidence taken before the Commission in the first and second cases, I do not understand yet whether that offer is made in the second case or not. Is it?

Mr. COWAN: Yes.

Mr. LYNDE: I object on behalf of the Chicago & Northwestern Railway Company, first, on the general ground that the evidence taken before the Commission is not admissible on this hearing. The statute makes the findings and the order of the Commission admissible but it does not make the evidence which was taken before the Commission admissible, and therefore there can be no basis upon which that offer is made that that evidence can be introduced, except it be found in the common law. That same question

35 was presented to this court in the case in which your Honor and Mr. Cowan, counsel for the Commission, were before his Honor, Judge Kohlsaat. I refer to the two-dollar terminal charge case. And the court ruled that that evidence was not admissible. Your Honor is no doubt familiar with the ruling. I have the copy of the record in the case here before me. It can be referred to if the Court desires it.

I object especially, however, to the introduction of this evidence on behalf of the Chicago & Northwestern Railroad Company in both the first and second cases.

The COURT: Let us dispose of that objection first. What do you say to that, Mr. Cowan, as far as they are concerned, whether or not they are before the Commission?

Mr. COWAN: Have you filed an answer in this case and in the second case?

Mr. LYNDE: I filed an answer in this case in which I set up especially that we were not served before the Commission; in the second case, the plea on file up to date is the plea of the former suit pending.

The COURT: Let the record show the demurrer sustained or whatever it is.

Mr. LYNDE: There is nothing in the answer, the joint and several answer—there is nothing in that that waives the point I make

36 in my answer to the petition in the first case.

The COURT: That point is, you were not before the Commission, that is the point now?

Mr. LYNDE: Not before the Commission.

Mr. COWAN: We will examine the record that we have here and if it appears from the record, and I have no doubt it does, as Mr. Lynde says, that the Chicago & Northwestern was neither served and did not answer nor appear before the Commission, that would, it

appears to us at first blush, necessitate dismissal as to Chicago & Northwestern. We could not expect, of course, that an order of the Commission in a case where they had not been cited and had not been served, and did not make answer, to bind them. That does not affect the second case.

The COURT: We will take that up the next time we meet, on Monday.

Mr. COWAN: We will examine the record, and your plea would supersede the necessity of objection in the second case if we should take that term.

Mr. LYNDE: We will meet that later.

The COURT: In the second case it would not make any difference whether they were before the Commission or not.

Mr. COWAN: Not at all.

The COURT: About that, so far as introducing this evidence was concerned, if they were not before the Commission, what
37 right have you to introduce that evidence before the Commission in the other case—what right have you to introduce that evidence in this case?

Mr. COWAN: I would not want to make an answer to your Honor's question at this moment, because I might answer wrong. Our position with respect to the admissibility of the evidence in the second case is dependent heretofore in our minds in discussing it, upon the fact that the same party was before the Commission in the case in which the finding was made, and if this party was not, at the first blush I am under the impression there could be no contention in regard to it.

The COURT: Pass that point for the present. What about the other point? What do you say to that, that the record itself should not be admitted in evidence.

Mr. COWAN: I do not think that is an objection that the defendant could make; we have the original here.

The COURT: He is not making that, the others, I assume, make that.

Mr. SEVERANCE: I make it.

Mr. LYNDE: I say assuming we were before the Commission.

Mr. COWAN: Your contention is that there should be certified copies instead of the original?

Mr. LYNDE: No, my contention is that the only thing that
38 is admissible is the findings and the order.

The COURT: The findings of fact, and not the testimony written out as given by the witnesses.

Mr. LYNDE: Yes, that is true, just the same as it would be in a chancery decree. You cannot produce these certificates of evidence together with the decree. The decree is the only thing that could be produced.

Mr. COWAN: I won't go into the discussion of that; that would depend entirely on the kind of a case.

Mr. LYNDE: I would call your Honor's attention to Judge Kohlsaat's ruling.

Mr. COWAN: I understand that. I am ready to answer the coun-

sel's and court's question as to the ground on which we hold that is admissible.

The COURT: All right, go ahead.

Mr. COWAN: I am not speaking now of the findings or the order, but I am speaking of the evidence taken before the Commission as shown by the record.

The COURT: Yes.

Mr. COWAN: I can find the case in which the Circuit Court at Cincinnati, that is my impression, in one of the old cases that went up to the Supreme Court of the United States held that this evidence was admissible before the Circuit Court, the Circuit Court of which Judge Jackson was the District or Circuit judge, which de-
39 cided the Kentucky bridge case, reported about the 35th or 37th Federal Reporter. He uses an expression in that case which was subsequently adopted by the Supreme Court to the effect that the Commission should be regarded as the general referee of the federal courts with respect to such cases. I do not claim that that makes this evidence admissible but I mention that. That was quoted, perhaps two or three times quoted by the Supreme Court of the United States, that was wherein Judge Jackson was subsequently on the Supreme bench and was discussing the powers and duties of the Commission and the extent of its jurisdiction and the like.

It has been the universal practice, with no exception as I am informed by counsel, who represents the Commission, and I believe I could likewise point to some of the counsel representing the defendants, if it was quite proper to do so, without exception it has been customary and the practice of the federal courts to admit in evidence the evidence taken before the Interstate Commerce Commission in the investigation made the basis of the order. Having mentioned that practice, with the single exception of Judge Kohlsaat's decision, I then desire to call your Honor's attention to the ground upon which we claim it is legal evidence.

The defendants in this case deny that it is the lawful order
40 of the Commission which we seek to enforce. The complainant must sustain the point that it is a lawful order, whether they denied it or not, as a condition precedent to your Honor's jurisdiction. Now, in the determination of that essential primary question as to whether this order is a lawful order: What does the law contemplate your Honor will do? In the first place, your Honor received as *prima facie* evidence the finding of the Commission. Turn to page 15 of the Interstate Commerce Act under Section 16 "and said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleas and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises, and to this end the court shall have the power, if it thinks fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition." It does not pretend to limit such a pro-

ceeding as this to legal evidence under the common law rules of evidence.

The COURT: What are you reading from?

Mr. COWAN: Section 16 of the Act to regulate Commerce. It affirmatively points out that the court shall make such investigation as it deems needful. The court in fact is authorized to do
41 that in an ordinary suit in equity. The court must hear evidence which the parties present, and here the court can make every inquiry which it deems needful. Now, isn't it needful to do justice in the premises, for the court to ascertain what it was that the Commission passed upon in arriving at its conclusion? There can be no question of that. It is certainly in the discretion of this court to do it, and how can the court determine whether this is a lawful order unless it ascertain what the facts were which the Commission passed upon? It seems to me that there can be no question of the right of this court, and no question under the circumstances of the duty of the court to ascertain what the facts were before the Commission upon which the Commission determined as an ultimate conclusion that this difference in these rates constituted an unjust discrimination.

The COURT: Now, just read Section 14 there.

Mr. COWAN: Yes, that has reference now to the report and findings. I have been speaking of the evidence before the Commission.

The COURT: You do not claim that under Section 14 there would be a right to put in this record, do you?

Mr. COWAN: I do not claim that under Section 14 that the evidence before the Commission is made admissible affirmatively
42 by that section, but I do claim that under Section 14 the findings of fact of the Commission are admissible in this judicial proceeding.

The COURT: Well, they admit that.

Mr. COWAN: As to the second case.

The COURT: They admit that the Commission's finding of fact is the proper evidence, the only proper evidence, I suppose limiting their minds to Section 14. Now, there it says, "shall include the finding of fact upon which the conclusions of the Commission are based together with its recommendations as to what reparation shall be made, and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found." That is the finding of fact. That does not mean the record of evidence. Now, what part of Section 16 do you say would include the record?

Mr. COWAN: If your Honor catches the point I had in mind——

The COURT: Read that again, the part of Section 16, which you claim includes the record.

Mr. COWAN: It is opposite the second marginal note "and said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as
43 to do justice in the premises, and to this end such court shall have the power, if it think fit, to direct and prosecute in such

mode and by such persons as it may appoint; all such inquiry"—not take evidence—"all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition."

Now, if your Honor please, we do not contend that under the common law rules of evidence, the evidence taken before this Commission would be admissible. No one can contend that. We do not contend that when your Honor admits it, that the evidence of any witness is *prima facie* evidence of the facts therein stated, as contained in that record, but that the record as a whole is admissible for your Honor's investigation and consideration, in order to determine whether the Commission's order is a lawful one, and in order to enable your Honor to do justice in the matter of the petition.

And as I said, it has been the universal practice, so considered, and I will produce the case to your Honor in which the Supreme Court held at Cincinnati—I believe it was at Cincinnati—that it was admissible, and I will ask Judge Baxter if he will be kind enough to tell me in what case it was held. I think he was in the case.

Mr. BAXTER: It was a case before Judge Sage. I think
44 the title of the case was Cincinnati & Chicago Freight Bureau *vs.* the Louisville & Nashville Railroad and other railroad companies.

Mr. SEVERANCE: When was it decided?

Mr. BAXTER: It must have been years ago.

Mr. COWAN: Reported somewhere about the 56th to the 60th Federal Reporter.

The COURT: You claim that this is an inquiry, is it, under this Section 16?

Mr. COWAN: Yes.

The COURT: That all such inquiries as the Court may think needful to enable it to form a just judgment——

Mr. COWAN: We think that lays down the bars entirely on the question of evidence.

The COURT: That is that I could take hearsay evidence, is that the contention?

Mr. COWAN: Yes, it lets down the bars practically, repeals the rules of evidence so far as inquiries this court may desire to make concerning those things which he believes ought to be investigated to enable him to determine or arrive at a just judgment.

The COURT: And the next clause is, "Such hearing or finding of fact and the report of the Commission shall be *prima facie* evidence."

That is all you claim amounts to anything, so far as *prima*
45 *facie* evidence, is the findings of the Commission.

The COURT: Then what is the object of putting in the record?

Mr. COWAN: The object of putting in the record is to enable the court to pass upon the question, if the court desires it—it is purely in your discretion—if the Court desires it, to see to what extent the Commission investigated these facts.

The COURT: To see whether their finding was a legal finding. Is that it?

Mr. COWAN: To see whether it was a lawful order.

The COURT: Whether it was a lawful order, that is it.

Mr. COWAN: I take it it is entirely in the discretion of your Honor, and it is not a matter that we understand under the common law rules of evidence that we could offer this evidence as affirmative evidence, but we contend that if the court desires it may consider the whole record as the Commission considers it.

The COURT: I understand.

Mr. BAXTER: My understanding is in the case before Judge Sage there had been a hearing before the Commission and a great deal of testimony taken before the Commission. He predicated his action upon the ground that any court had the right to receive testimony taken in any other court where the same question was at
46 issue and the same parties were before it. My recollection is that is the ground he put it on, not that the act to regulate commerce gave the court jurisdiction to take cognizance of that testimony at all, he was proceeding upon the general line.

Now, on the other hand, Judge Kohlsaat ruled contrary, as I understand here.

As to the other cases to which Mr. Gowan has referred, I believe without exception my friend Shaver and I have been of counsel in those cases, and for our convenience we have stipulated that there shall be read in the Circuit Court, as if it had been taken in that court, all of the testimony that was taken before the Commission. It has been a convenience to us. We have been opposed to each other in most every case I have been in, and we have acted on that principle; but there is no ruling of the court, no authority. As I understand it the question of authority before your Honor is Judge Sage on one hand and Judge Kohlsaat on the other.

The COURT: Mr. Shaver, have you anything to say about it? What do, you understand? What do you say in response to the suggestion of Judge Baxter as to the evidence put in before by agreement in all these other cases? Is that true?

Mr. SHAVER: That is true, he made a correct statement.

47 The COURT: Do you gentlemen refuse to agree that this shall go in?

Mr. LYNDE: I certainly do.

Mr. DAWES: For the Chicago, Burlington & Quincy I refuse to agree.

Mr. SEVERANCE: I refuse for the Chicago Great Western and the St. Paul Union Stock Yards, your Honor.

The COURT: Then let us settle this question.

Mr. COWAN: Judge Kohlsaat never passed on this question. It was never argued before him at all, we simply had the record there and offered it.

Mr. LYNDE: Here is the record.

Mr. COWAN: We simply had the record there and offered it and Judge Kohlsaat simply declined to admit it. We never argued the admissibility of that original record at all.

(Mr. Lynde here read from the record of the case before Judge Kohlsaat.)

Mr. LYNDE: The same point was made before Judge Kohlsaat exactly, the same objection was made and it was argued.

The COURT: There is no objection to the other evidence offered by Mr. Cowan, so that will be admitted without objection.

Mr. SEVERANCE: If the Court please, let me suggest coun-
48 sel has stated to your Honor that as to the second case the plea was improperly lodged because it was an entirely different form of action from the first case. Now, I desire to specially object to the admission of the findings of the Commission in the second case.

The COURT: On what ground?

Mr. SEVERANCE: On the ground that the first case is the one, as I understand it, I may have them mixed, as I understand it the first one is brought to enforce the order of the Commission.

The COURT: Yes, that is the first case.

Mr. SEVERANCE: I do not think by statute the findings are made evidence in the second case.

The COURT: The statute says so, doesn't it—"all other cases." The objection is overruled and the evidence is all admitted except the record and on that I will reserve decision for further argument as to both cases.

Exceptions were taken by the various defendants and intervenors to the above ruling.

Mr. COWAN: That, your Honor, makes our *prima facie* case, as to both cases.

The COURT: Yes, and I will pass later on the admission of that evidence. The next step—when do you propose to read these findings in?

Mr. COWAN: We are ready to proceed at any time that it
49 suits the convenience of the Court to hear them or we will furnish the court copies and treat them as read.

The COURT: I do not propose to do that if I can help it. We ought to dispose of them as we go along. I won't be sure about it unless you read it.

Mr. COWAN: I think you are correct. I will read the findings of the Commission.

Mr. BAXTER: Allow us to note an exception to your ruling as to their admissibility.

Mr. SEVERANCE: That is entered as to all intervenors?

The COURT: Yes.

Mr. JEFFERY: In all cases where exceptions are entered by the defendants may it be also noted as to the Missouri Pacific which I represent?

The COURT: Yes, as to everybody. Will the Court be furnished with a copy of the evidence?

Mr. COWAN: I supposed there was a regular court stenographer of the Government who would be here. Is the Court's stenographer here?

The COURT: There is no court stenographer. I am satisfied if the defendant will say they will furnish me a copy of the record.

Mr. BAXTER: We have employed a firm of reporters to
50 furnish us at 7 o'clock each evening with a report of what was done during the day and we will take pleasure in furnishing your Honor with a copy.

The COURT: That is all right.

A recess was here taken until 2 o'clock P. M.

2 o'clock P. M., September 15, 1905; Court met pursuant to recess.

Mr. SEVERANCE: I understand your Honor overruled the plea in abatement this morning and answers were filed. I have not the answer but Mr. Cowan, I understand, does not object if it is filed Monday morning.

Mr. COWAN: No.

The COURT: Mr. Cowan, what is the next?

Mr. COWAN: May it please the Court, at the adjournment, the evidence before the Commission had been offered. It may be conceded for the purposes of the argument that there is some doubt, there is always doubt about what the law is until a court of higher resort has affirmatively established it, there is about as much doubt about the law as about the facts, about what it is, at least, until it shall have been arbitrarily determined, and therefore it may be conceded that there is some doubt on the proposition as to whether in this sort of a case, and by that I mean the first case of the
51 combined cases here, for the enforcement of the Commission's order, whether the record of the evidence before the Commission is admissible, if the Court uses its discretion to admit it for the Court's consideration in arriving at a just decision in the case. My opinion is that it is admissible. As a precedent it is of very great importance. It is of great importance for many reasons.

One of the reasons is that the Court ought not to have to consider a case which was not the same case considered by the Commission when the Commission has founded its *prima facie* case upon the existing state of facts. The Supreme Court has condemned the practice of holding back testimony for the purpose of subsequently putting it before the Court. The law was that the Commission should pass on all the material facts, make full investigation, make their records with respect to everything which they do, keep a copy of everything on file which they do. Now, that is of the nature of a public record as much as is the statistical reports of the Commission.

The law makes the reports of the Commission which are published, admissible as evidence even without certification—simply the publication of the report is made evidence, not the findings of facts in a particular case but the whole report is admissible, not only
52 in the Federal but in the State court. The statute is broad and shows that general tendency and idea that the Court, when it hears one of these cases, shall have the opportunity to pass upon the facts intelligently, which means with substantially the same degree of information that the Commission obtained by making that character of investigation which it is difficult for the court to do.

And it is a matter of so much importance as a precedent that after consulting with the District Attorney and with the solicitor for the Commission we have decided to urge this court to accept it in testimony for the reason that the only decided case upon the subject decides that it is admissible evidence.

And we believe that there is good ground for admitting the testimony for your Honor's consideration so that you may indeed pass a just judgment in the premises, in the language of the act.

I desire, with the Court's permission to read from the decision which I referred to this morning. So far as counsel for the complainant know, there is no other case in which the question is discussed. It is true that Judge Kohlsaat sustained the objection. Your Honor was in that case—Judge Day was in it. I then maintained in discussion with Judge Day, and I think we all propose that the evidence was not admissible if objection was made.

53 At that time I will be frank enough to confess that I had never seen this decision. I found this decision afterwards just by the accident of running through the authorities on this subject, and we did not argue the question to Judge Kohlsaat, we simply accepted his decision. We offered it and Judge Day, I recall now, since Mr. Lynde read it this morning, said that if there is any mere technical objection that is not properly certified to, we would like to be able to correct that, and they said there was no technical objection, it was an objection going to the very relevancy of the testimony, assuming that it was properly before the Court, and we did not urge it, we did not look the subject up, and we made no argument to Judge Kohlsaat to show that that evidence was admissible. And so far as I am concerned, I am willing to confess that I acted upon the assumption that the law is as these gentlemen have stated it in their objection; but I have changed my mind about it, not because I am on this side of the case. I wanted the evidence in then—but because I understand more about the Interstate Commerce Act, or fancy that I do, than I did then. The court said in passing upon the matter now before your Honor:

(Counsel here read from the decision in Interstate Commerce Commission *v.* C. N. O. T. P. Ry. Co., 64th Fed., *Fed.* Rep., page 981.)

54 Mr. COWAN: Now, that is the only case in which the matter has been discussed and decided and that court decides apparently for good and sufficient reasons that the evidence is admissible, in the nature of a deposition, if you please, where both parties appeared and took testimony, respecting a particular subject matter that is now before the Court.

And if it shall be required that every time the Commission brings a suit to enforce its order it must again proceed to take testimony before the court, taking the time of the court and making expense for weeks, perhaps, it is a serious embargo against the Commission being ever able to prosecute one of the cases, and we deem that the precedent is important; that without very sufficient reasons your Honor ought not to decide contrary to that decision, but public policy would seem to require that that evidence which both parties

have taken before a tribunal appointed by law for that purpose ought to be admissible in evidence in a subsequent proceeding where it is applicable and relevant.

The COURT: What about the rule of the common law aside from the statute, where the parties are the same, the subject of action the same, and the right of cross examination existed before an inquisitorial body, was there not a right to review that same evidence if properly certified?

55 Mr. COWAN: Your Honor means to inquire, if I catch your question, whether it would be admissible even under the common law rules of evidence?

The COURT: Yes.

Mr. COWAN: I would not like to answer that question, since I believe it is so clearly admissible under the other; but I am disposed to think that it is not improbable that it might be held admissible as testimony taken on a former trial under common law rules of evidence.

The COURT: What is there to show that this was the evidence taken there, what is there to show that this is the evidence taken before the Commission?

Mr. COWAN: Well, I suppose that is conceded. I do not know whether there is a certificate there or not, but I can prove this fact as to that and we never supposed there would be any mere technical objection that we would have to first have it certified to.

The COURT: It is not certified to, have you it here?

Mr. COWAN: We have the testimony here. We brought the original record. It would be very expensive to copy those original records in advance for the purpose of offering them in evidence. It is part of the original record. We desire to offer the original evidence before the Court, and if the Court admits the testimony, then ask for an order of court to substitute certified copies and

56 withdraw the original paper from the files. We think there is no doubt of the right of the court to do that, and do not think counsel would raise objection that the evidence is not certified. I supposed their objection goes to the relevancy of the testimony. That is correct, Mr. Baxter?

Mr. BAXTER: To the competency.

Mr. COWAN: Competency and relevancy, and not to the mere matter of certification.

The COURT: What do you gentlemen say?

Mr. LYNDE: Our understanding of the common law rule is that such testimony is admissible only where witnesses are without the jurisdiction or are dead.

The COURT: Have you looked into the subject; where the evidence was taken before an inquisitorial body at common law was not such evidence competent when the question came up?

Mr. SEVERANCE: Only in those two cases, either where the witnesses are without the jurisdiction or had died since the preceding trial.

The COURT: What about evidence taken before the Coroner's inquest at common law.

Mr. LYNDE: That is not admissible, your Honor, at common law.

The COURT: And bodies of that character.

57 Mr. LYNDE: That is the rule expressly in this state, in Illinois—the only thing that is admissible is the finding itself of the inquisitorial body as to the death.

Now, this proceeding is not in the nature of review. If it were so the evidence of course could be brought before this court; on the contrary, it is in the nature of an original proceeding and the court sits as a court of equity and the law provides as to what force and effect shall be given to the findings of the Commission and to the order of the Commission, and those findings and that order are in themselves sufficient to make a *prima facie* case, then throwing the burden on the defendants to meet that by their proof.

There is no foundation for the suggestion counsel made that otherwise the burden of sustaining the findings affirmatively in this court would be on them, on the contrary the law is designed to avoid the necessity of that and the law makes those findings *prima facie* sufficient.

The inquiry is whether the defendants are going to be met by evidence that would not be competent in any other proceeding in a court of equity. I submit the law did not contemplate that. It certainly does not express any such idea. On the contrary the court sits as a court of equity, and the rules of evidence applicable in a

58 court of equity must apply here. It is just as your Honor stated as to the introduction of hearsay evidence. There is no reason why this should be allowed any more than evidence of rumors and hearsay that counsel might think would be pertinent or might affect the mind of the Court.

Mr. Severance suggests that so far as relates to the admissibility of depositions, or evidence that has been reserved in a certificate of evidence in a subsequent trial, we understand the rule to be that it is only where every witness cannot be produced, is dead, or is without the jurisdiction of the court, that his former evidence can be read.

The COURT: Well, you get your certificate showing that this was the evidence, or let the record show that it was the evidence by agreement, and the objection will be overruled.

Mr. COWAN: With the permission of the Court I would like to suggest to counsel, and I cannot very well do it without speaking aloud, that Mr. S-aver brought with him from the Commission's files the original record, and if that may be treated as though certified to, subject of course to all your objections except an objection to the fact of its not being certified, then we have the record ready to offer.

59 Mr. LYNDE: I don't think I understood you.

Mr. COWAN: I say, Mr. Shaver, the solicitor of the Commission, has brought with him the original record of the testimony, and if you will waive any objections with respect to its not being certified to, but preserve all of your other objections to it, then we have it ready to offer in evidence, otherwise we would probably have to return it to Washington and have it certified and sent back here.

Mr. SEVERANCE: Do I understand your Honor's ruling is that if

properly certified, that all of the testimony of the proceedings will be received here without reference to whether it is competent evidence?

The COURT: That is not until after I have heard the evidence.

Mr. SEVERANCE: But they are to read the evidence through, I understood, your Honor.

The COURT: If it is competent.

Mr. COWAN: None of it would be admissible if not relevant.

Mr. LYNDE: Do I understand you are to read that record now?

The COURT: Let us settle this proposition. Do you agree that this is the evidence taken before the Commission?

60 Mr. COWAN: We will submit it to you gentlemen. Otherwise we would have to send it back to Washington to be certified to. That is the only point there would be about it.

The COURT: What do you say? Isn't there some one man here who represents all these parties, Mr. Baxter?

Mr. BAXTER: No, sir, I don't represent them all.

The COURT: Who do you represent?

Mr. BAXTER: I represent a number of them, in connection with other counsel.

Mr. LYNDE: Just a moment. I think, your Honor, we will agree to waive the point that the record as offered is not certified, reserving, however, our objection to its admissibility, and also noting an exception to the Court's ruling.

Mr. COWAN: In the same manner is if it were a certified record.

Mr. LYNDE: As if it were a certified record on the assurance of counsel that it is.

Mr. SEVERANCE: Let the objection be entered on behaf of all defendants that it is incompetent, irrelevant and immaterial.

The COURT: Yes.

Mr. COWAN: And we will subsequently file, instead of
61 the original, certified copies of the entire record, so that is what will be in the record on the appeal of this case, if it
— appealed, will be the certified copy.

The COURT: The ruling now is that so much of that is admitted as is relevant and competent under the ordinary rules of evidence.

Mr. MILLS: That record provides that the laws of Minnesota so far as we wish to refer to them, will be considered in evidence before the Commission. Will that be the same order?

Mr. COWAN: I should say this court would take judicial notice of the laws of Minnesota.

Mr. MILLS: Of statutory laws, I do not think so.

Mr. COWAN: I think the Court would judicially consider we knew what the law was when you informed the Court what it is. We would not contest that.

The COURT: Go ahead with your evidence.

Mr. COWAN: If the Court please, it has been suggested by the District Attorney and Solicitor for the Commission that the plaintiff proceed to read the findings of the Commission and the order as a *prima facie* case, and postpone the introduction of other testimony until it shall seem necessary to introduce it, assuming that the

findings of the Commission make a *prima facie* case, we would
62 not have to go further in our opening than a *prima facie* case.

The COURT: Pursue your own course.

Mr. SEVERANCE: What is this for? Was not the offer of the testimony part of the case in chief?

Mr. COWAN: No, we did not exactly intend that should be the case, but while we had the record here we thought we would raise the question for this reason, Mr. Severance, if we cannot introduce this evidence before the Court it would necessitate the examination of a large number of witnesses and put us to a considerable inconvenience and the Government to considerable cost and we thought we would like to determine the admissibility of that evidence on a general offer without the necessity of reading it at present before we started out with the case fairly, so as to avoid the unnecessary expense and it is favorable to your client for that matter, it would be a great deal more trouble to them than it would be to us.

Mr. SEVERANCE: Do I understand that you rest your case in chief on reading the report in both cases or do you intend to read some of the testimony? The reason I ask is because it will make a good deal of difference in the time we have to have witnesses here.

Mr. COWAN: I am under the impression personally without
63 consulting with counsel that the findings of the Commission make a *prima facie* case. When we have made that *prima facie* case then we rest the case on that until other evidence is introduced.

Mr. SEVERANCE: And you reserve this old record to use in rebuttal, is that it?

Mr. COWAN: I think that is our understanding but I would not like to be absolutely bound by this suggestion.

The COURT: Go ahead and read your findings.

Thereupon counsel for the complainant read to the Court the findings and order of the Commission, in the words and figures following, to wit:

* * * * * * *

(NOTE.—See Volume of Pleadings, pages 6 to 110 inclusive.)

64 Mr. COWAN: As I understand, the defendants all admit that they have refused to comply with the order?

Mr. DAWES: I at this point desire to object to the introduction of this record unless the entire record be introduced, that no mutilated portions be admitted.

The COURT: Which, the findings of fact?

Mr. DAWES: I mean the entire opinion, which is all to be taken and embodied together as the opinion and finding of the Interstate Commerce Commission; some portions of it counsel has read and offered, and other portions he has omitted.

The COURT: What he has offered is the finding of facts.

Mr. DAWES: But he has read the opinion as well as the finding of fact, your Honor.

The COURT: If he has not read all that he should read it.

Mr. DAWES: I assert that he has not read it all.

The COURT: Then you can read the rest of it. The objection is overruled. You can read your part of it when you get to it.

Mr. DAWES: It is not our part of it. Let it appear, if it please your Honor, if that be the fact, that the complainants offer a portion of the finding of fact of the Interstate Commerce Commission, and because they offer a portion, we object.

65 The COURT: Your objection is overruled, but the Court holds, if they offer a portion, you are entitled to read the rest of it.

Mr. DAWES: We save an exception.

Mr. COWAN: For the purpose of the record we will state that we have read all of it except the dissenting opinion of Mr. Knapp.

The COURT: Is that an opinion or statement of fact?

Mr. COWAN: It is not a finding. With the understanding that we do not offer it, I am perfectly willing to read it.

Mr. DAWES: The objection does not go to your failing to read it, but to your failing to offer it.

Mr. COWAN: We do not offer it.

Mr. DAWES: The position being that you offer a portion of the finding and opinion of the Interstate Commerce Commission and not all of it.

Mr. COWAN: We state to the Court that the objection is founded upon an incorrect statement of facts, that we offer only a portion of it.

The COURT: They have got their exception. I do not suppose any exception is necessary in an equity proceeding. The objection is overruled and they get the benefit of it. What is your next move?

Mr. COWAN: I will ask the question if the defendants ad-

66 mit that they refused to comply with the order of the Commission.

Mr. BAXTER: It is so admitted in the answer.

Mr. COWAN: I thought it was admitted in all the answers. I am just saving time of hunting up the answers and finding it.

Mr. BAXTER: They admit they have not complied with it in the answer because they say it is an unlawful order.

Mr. COWAN: I believe I am correct that it is not denied in the answer that the order was served on all of the defendants.

The COURT: You can look that up later and if you want to prove it, you can prove it. Is there anything else?

Mr. COWAN: With that understanding the complainant rests its *prima facie* case.

Mr. LYNDE: Do you rest both cases?

Mr. COWAN: Yes.

The COURT: What about the Northwestern Railway Company, what did you find out about that?

Mr. COWAN: We have not had time to go through the record to see whether or not the proceedings justified the Northwestern being made a defendant in the first case.

The COURT: Let the record show that this evidence is not admitted

against the Northwestern Railway Company for the present,
67 unless it is shown they were parties in the other proceeding and had a right to come in and cross examine. If they did not have that right, I am sure it is not competent.

Mr. LYNDE: Assuming, your Honor, that we are in and that this evidence is competent to us as to others, I desire to ask counsel now whether he has offered any part or portion of the testimony of any witness or witnesses taken before the Interstate Commerce Commission?

Mr. COWAN: No, I have not. We have offered all of that testimony, but we have said we did not desire to read it at this time.

Mr. LYNDE: What portions have you offered then, please?

The COURT: Let the record show. I think counsel are entitled to that.

Mr. LYNDE: We are entitled to know what portions are in.

The COURT: Whether it is in now or whether you want to put it in in rebuttal.

Mr. COWAN: We desire to offer that testimony in rebuttal. We took the matter up for a very sufficient reason.

The COURT: Suppose there is no chance for rebuttal, suppose the gentlemen stop here?

Mr. COWAN: If they do that, the evidence has not been offered in the sense of becoming a part of the evidence in this case un-
68 less the Court sees fit to refer to it under the 17th Section of the Statute.

Mr. LYNDE: It is either in or out, and if counsel does not offer it——

The COURT: I think you are entitled to have it in or out. Of course you have got the judgment of the Court that it is competent. You have a right now to put it in or wait until rebuttal, if you have a chance for rebuttal.

Mr. SEVERANCE: If it goes in in rebuttal, of course only such portions go in as are strictly rebuttal?

The COURT: Of course. I will decide that when we get to it. I do not suppose the strict rules of evidence are held very strictly in this kind of cases.

The question for Commissioners' counsel is to determine whether they are satisfied that there are enough facts found, read to the Court, not conclusions, facts to sustain their case, and let it go upon that.

Mr. COWAN: We rest the evidence of the *prima facie* case upon the findings of the Commission, but we do that with the understanding the Court has ruled that the evidence would be admissible under your Honor's ruling this morning, but we do not know what we would want to offer and we cannot tell what part we want to offer until we see what testimony the defendants have a mind
69 to introduce, and if they do not introduce any, then we shall not ask to offer any, that is to say, we shall not ask to read it. The court passed upon its admissibility in the argument today, and we are willing to rest the case upon the findings of the Commission as read and presented to your Honor this afternoon.

The COURT: What you want is to let that make a *prima facie* case, and if they do not put in any evidence, you are willing to argue that that makes a case?

Mr. COWAN: Yes, sir.

The COURT: Then if they put in any evidence you want to put in your record there in rebuttal?

Mr. COWAN: Yes, sir.

My. LYNDE: I would ask that the order made this afternoon overruling our objection be set aside.

The COURT: We will let it stand as it is. We will see about those questions when we reach it.

Motion overruled.

Mr. LYNDE: I understand at the present it is offered?

Mr. SEVERANCE: There was a formal offer made and ruling.

The COURT: Let the record stand as counsel has stated, and your motion as you make it, is overruled. Is there any evidence on your part?

Mr. BAXTER: We have a number of witnesses we wish to
70 examine.

The COURT: Are there any motions you want to make?

Mr. BAXTER: None.

Mr. LYNDE: I would suggest, your honor, as the case goes over until Monday that the matter be deferred until Monday morning?

The COURT: Very well. Adjourn Court until Monday morning.

The further hearing of said cause was adjourned until Monday, September 18th, 1905, at 10 o'clock A. M.

70½ SEPTEMBER 18TH, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon the following proceedings were had.

The COURT: Are you ready in this Inter State Commerce case?

Mr. SEVERANCE: The answer of the Chicago and Great Western Railway Company was filed this morning.

Mr. MILLS: May it please the court, the Minnesota Warehouse and Railroad Commission, in reference to their case, I am obliged to say that I will have to go out of town and I would like to put in our testimony today if it is agreeable to court and to counsel on the other side of the case.

The COURT: What do the other counsel say?

Mr. MILLS: In the opening, I would say further that in reference to some of our schedules, we have been unable to carry them down to this date. We may be able to do so before the case closes, and if so, I would ask leave that Mr. Severance take our witness- and carry them down. Now, Mr. Cowan, have you the testimony that was taken before the Commission?

Mr. COWAN: Yes.

71 *Testimony Introduced on Behalf of the Minnesota Railroad and Warehouse Commission.*

Mr. MILLS: I desire to offer the testimony of Mr. Charles F. Staples, a member of the Commission, and the testimony of Mr. Thomas Yapp, our assistant Secretary, that was taken before the Inter State Commerce Commission, together with the schedules. Will there be any objection?

Mr. COWAN: We will enter the formal objection that the Commission of the State of Minnesota has no ground on which to offer the testimony in question. It encumbers the record with a great lot of testimony that is immaterial.

The COURT: The way to get at that would be to get his answer out, wouldn't it?

Mr. COWAN: When they offered their intervention, I made the formal objection and it was formally overruled, but the objections we have to the testimony now offered will be that it is irrelevant and immaterial to any issue in this case or either of the cases, to show what the testimony is intended to show, that is, that the relation of the rates, if changed by a reduction would reduce the rate from the Minnesota points and will require a reduction by the Minnesota Commission of the rates to South St. Paul.

The COURT: Well, the objection is overruled.

Mr. SEVERANCE: We desire to interpose the same objection to this testimony that we interposed the other day when Mr.
72 Cowan offered to read from the record of the trial before the Inter State Commerce Commission. Our objection does not go to the materiality of the testimony but to that point we made the other day.

The COURT: Objection overruled.

Mr. SEVERANCE: I understand that all of my colleagues join me in that objection.

Mr. MILLS: Mr. Cowan says that they will waive the reading of this testimony at this time and I presume that that will expedite matters and I am perfectly willing to do it and simply call your Honor's attention to it on the argument.

The COURT: That is all right.

Mr. BAXTER: We would like to have whatever is to be considered by your Honor, read in our presence. I don't know anything about the testimony.

The COURT: Oh, well, it will be read before you have a chance to argue it. You can examine it, I suppose.

Mr. MILLS: So far as I am concerned, any objection that there may be, I am willing that this testimony can be read at any time.

Mr. SEVERANCE: I understand that the court has ruled that it is only a question as to when the testimony is to be read.

The COURT: Oh, yes.

Mr. BAXTER: If this is going to be argued immediately
73 at the close of the oral testimony, I would like to know what this is that you are putting in now; otherwise, I will have to look it up at night. Is there much of it?

Mr. MILLS: Not a great deal, 15 or 20 pages.

Mr. COWAN: We will reserve, of course, the right to object to the testimony for incompetency and irrelevancy of the evidence at the time it may be considered. By waiving the reading now we do not thereby waive the objection to the competency and relevancy of the evidence when it comes up for consideration.

Mr. MILLS: Do I understand that the case is to be ready for oral argument as soon as the testimony closes?

The COURT: I think so, yes. I want to dispose of this as we go along.

THOMAS YAPP, called and sworn as a witness on behalf of the Railroad and Warehouse Commission of Minnesota, testified as follows:

Direct examination by Mr. MILLS:

Q. What is your occupation?

A. Assistant Secretary of the Railroad and Warehouse Commission of Minnesota.

Q. How long have you been connected with the Minnesota
74 Railroad and Warehouse Commission?

A. Eleven years.

Q. Do you remember a conference with the Minnesota Railroad and Warehouse Commission, that it had with the railroads in regard to the rate on live stock from Minnesota points and South St. Paul, that took place some time in the year 1901?

A. I do. It was the year 1902.

Q. 1902?

A. Yes sir.

Q. What time, do you recollect?

A. Well, it was some where about June, some where in June, 1902.

Q. Where was it held?

A. In Chicago.

Q. You may state generally what that conference was for?

A. The conference was for the purpose of readjusting the live stock rates into South St. Paul, which was caused by several complaints coming into the office of the Commission from the southwestern portion of Minnesota and also complaints received from the South St. Paul Stock Yards.

The Commission instructed me to look into the matter, and, on investigation, I found that the cattle rates from the southwestern portion of Minnesota into Chicago were much less than what the rates were on hogs, and the reverse as far as the South St. Paul markets were concerned. That is to say the rates on cattle were much higher than they were upon the hogs.

We had two conferences down in Chicago in connection with the matter, at which the traffic officials of the various roads were
75 present and it was finally agreed that a compromise should be reached and it was reached, that they would make the same rates on cattle, hogs and sheep from that territory into South St. Paul markets, if they would do that, that that would be satisfactory to our Commission or if it would be, that they would do it, and

the matter was accepted by the Commission and up to the present time, I believe, has proved satisfactory although the relations existing between the cattle and hogs is the same as it was then into Chicago, that is to say, the cattle rates are lower than what the hog rates are from all that western and southwestern portion of the State.

Mr. COWAN: We shall object to any testimony that states what the rates are, except in connection with a tariff. That is the best evidence and that is a matter of record. They are required to be published and filed.

The COURT: Objection overruled. Of course in a case where there are a great number of documents, they have a right to put an expert on to tell what the substance of them is.

Mr. MILLS:

Q. Prior to this conference with the railroad officials, you visited the southern part of our State and the southwestern portion in relation to this matter?

A. Yes sir.

Q. Now you may state what the result of that investigation was as to the amount of cattle that were being received at the

76 South St. Paul Stock Yards?

A. Well, the principal objection that I found out was in connection with the rates, that they claimed that the rates into South St. Paul Stock Yards were too high, that they could not ship them in there as against Chicago. That was the main trouble that I found.

Q. How much stock was being received from that section of the country, in South St. Paul?

Mr. COWAN: Unless this witness knows, we will object on the ground of hearsay.

The COURT: Overruled.

Mr. MILLS: You may cross examine in that regard.

A. Well, I have the figures over there.

Q. I mean prior to the adjustment, how much stock was being received there, have you the figures on that?

A. No.

Q. What did you find in regard to that?

A. Well, I found that they could not, as I say, ship the cattle into South St. Paul at the existing rates.

Q. Were there practically any cattle coming from Southern Minnesota to our Stock Yards?

A. From directly the southern part of the state?

Q. Southern and southwestern?

A. Yes, there was a little but not very much.

Q. And at some stations you would not find any?

77 A. That is so.

Q. Do you remember about this conference with the railroad companies, which is mentioned in the petition in this case which was called to the attention of our Commission through an article we saw in the Railroad Age?

A. Yes sir.

Q. What was done by the Commission?

A. The Commission instructed me to write a letter immediately to Mr. A. C. Bird, who was then third Vice President and traffic manager of the Chicago, Milwaukee & St. Paul Railway.

Q. Have you a letter press copy of that letter with you?

A. I have.

Mr. COWAN: We object to the introduction of the letter, if he means to offer it, on the ground that it is a transaction between them and is in no sense relevant here, whatever letter they might have written to the St. Paul Road.

The COURT: Is there any dispute about the general proposition, is there any dispute?

Mr. COWAN: That there was correspondence?

The COURT: Yes, and the substance of it.

Mr. MILLS: The substance of the correspondence is that we would have to readjust the rates in Minnesota.

Q. That letter is on page 971 of this letter book, is it?

A. This letter book, number 26.

78 Mr. MILLS: We offer that letter in evidence and ask to substitute a copy for the original.

The COURT: Admitted.

Mr. SEVERANCE: Don't you want to read it?

Mr. MILLS: Well, read it and let the reporter take it.

A. (Reading:)

"ST. PAUL, May 19*th*, 1902.

"A. C. Bird, Esq. Third Vice President, C. M. & St. P. Ry. Chicago, Ills.

DEAR SIR: We noticed in the Railway Age that the Inter State Commerce Commission recently met in Chicago and heard a complaint filed by the Chicago Live Stock Exchange complaining that the local rates on live stock from many points in Minnesota, Iowa and Missouri to Chicago are in excess of the proportional rates between Missouri River points and Chicago, on dressed beef and that Chicago is being injured as a live stock market and that the railroad companies interested have asked for an extension of time so as to present their present tariffs in live stock and dressed beef. It is our desire to call your attention to the fact that railroad rates on live stock were recently readjusted from points in the southern portion of this state to St. Paul, and it was the general understanding with the various railroad companies represented at that meeting that the rates into Chicago from those points affected by the readjustment were not to be interfered with, as it would lead to a further

79 investigation on our part. We do not wish in any manner to be understood as interfering with Inter State business but desire to express the hope if any readjustment of live stock rates is made into Chicago from Inter State points, that a corresponding reduction be made from St. Paul or it will necessitate a further examination by us of this matter which is to be avoided if possible in view of the fact that the present rates appear to be satisfactory to all parties interested. An early reply will greatly oblige."

Cross-examination by Mr. COWAN:

Q. Previous to that time, is it not a fact that Mr. Bird wrote a letter either to you or some one of the Commissioners, suggesting that you intervene in this case?

A. Prior to this time?

Q. Yes.

A. No sir.

Q. Subsequent to that time didn't Mr. Bird write a letter suggesting that you intervene in the case?

A. Well, I am not sure whether there was a letter but we had some interviews with Mr. Bird in Chicago here and I think the suggestion came from Mr. Bird that the only thing for us to do would be to intervene.

Mr. MILLS: That is a fact, Mr. Cowan, Mr. Bird said to
80 us that, as we claimed to have an interest in this matter we had better intervene.

Mr. COWAN:

Q. Is it not a fact that the rates of freight which are charged from St. Paul and from stations for a distance of 50 to 70 miles south of St. Paul and South St. Paul, on hogs and cattle to Chicago, are very much greater than the rates charged on dressed meat and packing house products from St. Paul?

Mr. MILLS: I object to that. I did not go into that with him.

The COURT: Objection overruled, let him answer.

A. I could not answer that question without reference to the maps and my rate notes. I would have to have them before me before I could answer a question like that because the rates differ so much.

Mr. COWAN:

Q. How are the rates in southern Minnesota to be affected by any order in this case? You have read the Commission's order in this case?

A. Yes sir.

Q. Those stations are not intermediate, are they, between St. Paul and Chicago?

A. No, not directly in the southwestern portion.

Q. They are not intermediate between Sioux City and Chicago, are they?

A. No, not directly.

Q. Well, if the rates in southwestern Minnesota are not intermediate between St. Paul and Chicago and not intermediate
81 between Sioux City and Chicago, how does the order of the Commission in this case affect those rates? It does not in terms apply to them, does it?

A. The fact of the matter is it would affect the parallel lines running right down. They come right down straight into southwestern Minnesota.

Q. What line is it from Sioux City that goes through Minnesota

and where live stock is handled, so that a station would be called intermediate between Sioux City and Chicago, that is yet in the State of Minnesota?

A. Why, it would be the Northwestern line.

Q. The Chicago & North Western?

A. Yes sir.

Q. How would an order that the rate on packing house products and dressed meat be not lower or the rates on live stock be not higher —that is to say, that they should be the same—how does that affect the rates from that district to St. Paul?

A. Well, it affects it this way, so far as the rates into Chicago be reduced.

Q. How does that reduce the rate from South St. Paul and from Minnesota points?

A. The business would go directly to Chicago instead of coming to South St. Paul.

Q. Then, is your intervention for the benefit of South St. Paul?

A. I do not know about that.

Q. The shippers do not object to lowering the rates on freight, do they?

A. To where?

82 Q. To St. Paul or any where else?

A. No.

Q. Now, why do you file an intervention here except for the purpose of still maintaining the high rate to South St. Paul and Chicago, for what other purpose do you file an intervention except that?

Mr. MILLS: That is objected to. The witness is not competent to testify on that question.

The COURT: He may answer.

A. The intervention has simply been for the protection of our own market.

Mr. COWAN:

Q. For the protection in preventing a reduction of the Chicago rate?

A. Exactly.

Q. Because if you reduce the Chicago rate then the relative rate to South St. Paul you think would be out of proportion?

A. Exactly, our Commission would reduce the rates to South St. Paul.

Q. The Commission of Minnesota, in that event, would have to reduce the rate to South St. Paul?

A. Yes sir.

Q. Now, if the rate as a matter of fact is unlawful, as charged, to Chicago, as the Commission has found, do you claim it ought to remain unlawful in order that the rate remain the same to South St. Paul?

A. Please repeat that question.

Q. If the rate from southwestern Minnesota is affected by this

decision of the Commission, as you assume it is, and if that
83 rate is an unlawful one, why would you object to it being reduced to a point that would make it lawful, except that you still want to maintain a high rate to South St. Paul?

Mr. MILLS: The same objection.

A. Well, I don't know that it affects it that way. One thing depends on the other. It don't affect the rate into South St. Paul at all any further than if one rate is reduced the other has got to be.

Q. If one ought to be reduced, what objection have you to reducing the other?

A. That is what we should do.

Mr. MILLS: I object to this, he is giving his opinion on this——

Mr. COWAN:

Q. Do you contend, as a representative of the Minnesota Commission, if the rates of freight held, the adjustment of the rates held to constitute a preference on dressed meat and packing house products, do not constitute a preference as held by the Inter State Commerce Commission,—do you contend that? In other words, do you dispute as a fact the correctness of their finding that the rate on dressed meat and packing house products ought not to be less than the rates on the live stock?

Mr. MILLS: I object to that.

The COURT: Objection sustained.

84 Mr. COWAN: For the purpose of the record, I desire to repeat the question in a little different form, without entrenching upon the ruling of the court.

Q. Is it the contention of the Minnesota Commission that the decision of the Inter State Commerce Commission in this case—that is, their finding of fact—that the existing relation of rates from St. Paul to Chicago on the packing house products and dressed meat and on the live stock (or from points intermediate) and from the Missouri River on the same, and points intermediate, constitutes an unlawful discrimination or preference? Is it the contention of your Commission that that finding of fact and decision, is erroneous?

Mr. MILLS: That is objected to.

The COURT: Objection sustained.

Mr. COWAN: I think, if the court please, as they are intervenors, your Honor can see the importance of the question when I call your attention to the fact that they are intervenors and if they are not questioning the rightfulness of the decision of the Inter State Commerce Commission, they have got no business in here.

Mr. MILLS: We do question it.

The COURT: That is a question of law and hence it is a question for their counsel to say. You can cross examine on questions of fact.

Mr. COWAN:

85 Q. You have a copy of the Minnesota Distance Tariff,
A. Not with me I have not.
haven't you?
Q. You can produce it?
A. We can.
Q. Will you tell me whether the Minnesota Commission itself makes the rates or regulates them by changing upon application, such rates as it may find wrong?
A. Yes sir.
Q. Which does it do?
A. Regulates them.
Q. Has the Minnesota Commission passed on the schedule of rates now in force in the State of Minnesota?
A. It has on several occasions when complaint has been brought before it.
Q. Has it adjusted, passed upon or approved or otherwise taken any action relative to the rates on live stock, dressed meats and packing house products carried in the State of Minnesota?
A. Carried in the state?
Q. Yes.
A. From points in Minnesota?
Q. Between points in the State of Minnesota?
A. Yes sir.
Q. Are the rates on dressed meat and packing house products higher or lower between any two given points, than the rates on the live stock?
A. Well, I could not answer that without having my records before me, I could not answer the question direct.

Q. Is it not a fact that the rates of freight from South
86 St. Paul on dressed meats and packing house products, to points in western and southwestern Minnesota are higher than the rates on the live stock from the same points in southwestern Minnesota to South St. Paul?
A. I could not answer that question.
Q. Don't you recollect the fact as to which is higher or lower?
A. No, I could not tell you.
Q. In your schedule or distance tariff, is not the rate on the live stock lower than on the dressed meat and packing house products?
A. Yes, it is.
Q. The schedule is lower on the live stock?
A. It is.
Q. Now, why is that so?
A. Well, that would be covered by the classification; I think that was the principal thing. There is no special reason for it.
Q. Do you know of any place where the rate of freight on live stock is greater than on dressed meat and packing house products, except between the Missouri River and the Mississippi River on Inter State shipments and to Chicago?
A. I cannot answer that question.

Q. Well, you can answer it whether you know of any case or not?

A. No, I do not.

Q. How is that?

A. I do not.

Q. How many years have you been engaged in your present employment as the Secretary of the Commission of Minnesota?

87 A. I am Assistant Secretary, not the Secretary. I was appointed assistant Secretary about twelve months ago.

Q. You had formally been in some position with them, had you not?

A. Yes, I was assistant to the Commissioners before.

Q. How many years?

A. Oh, ten years.

Q. Is it not a fact when you first went to work for them that all of the published rates gave a lower rate on live stock from the Missouri River and all of this intermediate territory than they did upon the packing house products and dressed meats?

A. Well, I cannot answer that question.

Q. Do you know whether or not there are any shipments of cattle from South St. Paul to Chicago upon the published local rate on cattle?

A. Well, there are very few. There is very little that goes on the local rate.

Q. On what basis are they shipped, what rate?

A. Well, let's see. Twenty cents a hundred, but then there is another tariff. I have not got figures from points west of Lakota Station, along parallel lines and other lines. There is a tariff which names rates or which makes rates between St. Paul and Chicago as low as twelve cents; in other words, that is probably a balance of a through rate.

Q. Is it not a fact that the rates on cattle from points south of St. Paul on the lines of railroad going south, and from

88 points in the vicinity of St. Paul, are twenty-five cents per hundred pounds shipped direct to Chicago?

A. That is about what it is, yes.

Q. And on distances not any greater than from St. Paul to Chicago?

A. That is so. I would like to ask that I have the map before me in order to be able to give you the exact figures. I have got one there that I can look at and refer to.

The COURT: Get anything you want in order to be able to answer the questions.

Mr. COWAN: We don't care about taking up any more time particularly with it.

The WITNESS: It is quite hard to answer those things from memory.

Mr. COWAN: It appears from the tariff on file that the present adjustment of the live stock rates from South St. Paul and from that vicinity, that it takes the same rate to Chicago on fresh meat,

the local is seventeen cents to Chicago and if destined beyond Chicago to the east, the proportional is 14 6/10 cents?

A. Yes sir.

Q. On packing house products 15.7 and the proportional on dressed meat is 14.6?

A. Now, haven't you got the thing reversed? Isn't the packing house product 14.6 and the fresh meat 15.7?

Q. Yes, that is right. Now, the rates on cattle are 25 cents and on hogs 27?

A. Yes sir.

89 Q. Do you regard that adjustment of relative rates on those products——

A. That is a question I cannot answer.

Q. But you don't know what I was going to ask you. I am just asking you if you regard it as being a proper and reasonable adjustment of the relation of rates on the two different commodities, the live stock and the products of live stock?

The COURT: What do you say?

A. Well, in my judgment I think it is possible that the packing house products are a little on the low side, that they ought to be raised.

Mr. COWAN:

Q. How is that?

A. I think the packing house products ought to be raised. I think the rates are low.

Q. The question is if they should be raised do you mean that the live stock rates should also be raised in order to still maintain that relation of rates, or do you mean that the relation between them is wrong?

A. I mean the relation.

Q. You mean the relation?

A. The relation.

Q. Have you present with you the published tariff of any of the railroads, or a printed or otherwise written schedule, showing what your rates are on live stock, dressed meats and packing house products in the State of Minnesota?

A. I have none here, no sir, not with me.

Q. Can you get a publication of the railroad tariffs? You can get that, can't you?

A. Yes sir.

90 Q. Will you get one from the principal roads that do business, the St. Paul and the North Western, and other roads in your state?

A. Yes sir.

Q. Of the local tariffs?

A. Yes sir.

Q. Or, you may call them through tariffs, but at all events a tariff on live stock on one side and packing house products on the other?

A. You want us to make up a statement for you?

Q. After I see them, I can then suggest what statement I might want made. Now, as I understood you to answer a while ago, the rates which are now in force on the different lines of railroad, which have been published there, are the rates which have been substantially agreed to by your Commission?

A. Yes sir.

Q. And those are the rates to which you referred in your letter to Mr. Bird, wherein you say that you do not want the relation of the rates destroyed?

A. Yes sir.

Mr. COWAN: That is all for the present, we want him to get those tariffs.

Examination by Mr. SEVERANCE:

Q. I understood you to state that live stock is not moved from South St. Paul to Chicago on these rates, these local rates? That is true, isn't it?

91 A. That is true.

Q. It is moved on a proportional rate?

A. On a proportional.

Q. On the balance of the rate from western points?

A. In some instances, yes sir.

Q. Is it not true that the rates upon which cattle and hogs are moved from South St. Paul to Chicago, being the proportion or balance of a through rate from Montana, Dakota and Minnesota points, varies depending upon the station of origin and that it runs as low as 13½ cents in some cases and from that to 14 or 15 cents?

A. Yes sir.

Q. So that as a matter of fact, the live stock from South St. Paul to Chicago is moved at a lower rate than the packing house rate which is collected?

A. Yes sir.

Q. Or the fresh meat rate either?

A. Yes sir.

Q. Now, your attention was directed by counsel to certain stations between St. Paul and Chicago from which the rate was—I think he called your attention to one that was 25 cents?

A. 25 cents on cattle.

Q. Now, from those points there is no proportional rate in force, is there?

A. No sir.

Q. And there is no competition at those points, is there?

A. No sir.

Q. Is it not a fact that packing house products are moved to the east from South St. Paul, to some extent, by the Lakes?

92 A. Yes sir.

Q. So that the roads meet with Lake competition on those products?

A. Yes sir.

Q. That is not true as to live stock, is it?

A. No sir.

Q. You were asked what you meant by the relation of rates that was satisfactory to your commission. As I understood what you meant was that you were satisfied with the relation between the live stock rates into South St. Paul and the live stock rates into Chicago from Minnesota points, is that correct?

A. Yes sir.

Q. As a matter of fact, a great deal of the live stock moves to Chicago from these points, does it not?

A. Yes sir.

Q. At the present rate?

A. Yes sir.

Q. Is there any other point at which live stock is slaughtered to any considerable extent, in Minnesota, other than South St. Paul?

A. No sir.

Q. That is the only place where there are large stock yards, is it?

A. Yes sir.

Q. What packers are doing business there?

A. Swift & Company and Brunsen & Company and McCormick & Company.

Q. There are none of the Chicago packers there except Swift & Company?

A. That is all.

93 Q. Isn't it a fact that the total product manufactured at those yards, of live stock, is insufficient to supply the demand of the territory north and west and in the vicinity of St. Paul?

A. Yes sir.

Q. And at the present time cattle are slaughtered in Chicago and Kansas City and the product is shipped up to supply the market in the territory tributary to South St. Paul?

A. Yes sir.

The COURT:

Q. Are there any packing houses west or northwest of St. Paul of any size?

A. No sir.

Mr. SEVERANCE:

Q. Can you state Mr. Yapp, about the proportion of live stock raised in Minnesota which goes to South St. Paul and the proportion that goes to Chicago?

A. I can up to the year 1902.

Q. What was it then?

A. I shall have to get my papers, I have it there.

Mr. COWAN: We object to the answer to the question which must be gathered from documents and information that the witness has obtained from statistics of one kind and another, and at least we desire to ask him a question or two before he offers the testimony, as to the means of his information.

The COURT: He says 1902 he can tell about.

Mr. COWAN:

Q. You have the information before you?

94 A. Yes, and this is an exhibit that was put in in the last testimony.

Q. I am going to ask you about that. You put in before the Inter State Commerce Commission a copy of the statement you now have before you?

A. Yes sir.

Q. How was that statement obtained, how did you obtain the information?

A. The figures for St. Paul were obtained from the Stock Yard Company at South St. Paul. The figures at Chicago were obtained from the railway company direct. The figures from Sioux City were taken from the Stock Yard Company.

Q. And all you know about their correctness is that they claimed they were correct?

A. Yes sir.

Mr. COWAN: Now, at the outset—I don't want to argue to the court now that this evidence is not admissible, but in order to lay a precedent on this subject at the outset I object to the testimony on the ground that it is a class of information that is secondary evidence and hearsay.

The COURT: The proposition is that the court has a right and it is the court's duty to examine everything he can. Why not put in your objections as we go along, assuming that the court will only pass upon proper evidence.

Mr. SEVERANCE:

Q. It is the duty of the railroad company under the law of Minnesota to furnish you with statistics, is it not?

A. Yes sir.

95 Q. And were these statistics furnished to you according to law and upon demand?

A. Yes sir.

Q. And kept on file in your department?

A. Yes sir.

Q. As a public record?

A. Yes sir.

Q. Now, I will repeat the question.

(Question read as follows: Can you state, Mr. Yapp, about the proportion of live stock raised in Minnesota which goes to South St. Paul and the proportion that goes to Chicago?)

A. In 1902 the total number of cars of cattle, hogs and sheep received at South St. Paul was 5,341. The total cars of cattle, hogs and sheep received at Chicago 9,305.

Q. The point of origin was in Minnesota?

A. Minnesota.

Q. In all cases?

A. That takes the points on the Great Western, the Minneapolis

and St. Paul, the Milwaukee, the North Western, the Omaha and Rock Island in the southern part of the state.

Q. That does not include shipments from South St. Paul of through stuff?

A. No sir.

Q. From western points?

A. No sir.

Q. So that those figures are the figures showing the shipments of live stock from primal points?

A. Yes sir.

Q. Where the stock is raised and collected and shipped?

96 A. Yes sir.

Q. Now, Mr. Yapp, have you attempted to make up any statement since 1902 of this same character?

A. I am endeavoring to get it up to date but I have not exceeded so far.

Q. When do you think you will have that completed?

A. Well, it all depends upon the railroad company. I presume it will take a couple of weeks any way to get the statements.

Q. How far is it from St. Paul to the southern line of the State of Minnesota?

A. About 219 miles.

Q. To what point?

A. That is to Beaver Creek.

Q. That is the southwestern corner, isn't it?

A. Yes sir.

Q. Well, in a direct line to the southern part of the state?

A. A direct line, that would be—the nearest would be the Minneapolis and St. Louis, 198 miles.

Q. How much is it by the Chicago-Great Western, straight south from St. Paul? It is not over 120 miles, is it?

A. No sir, 120 miles.

Q. In what portion of the State of Minnesota did the stock originate which went to Chicago as you have stated, from the southern part?

A. Practically south of the H. & D. Division of the Milwaukee.

Q. The H. & D. Division of the Milwaukee runs east and

97 west about thirty miles south of St. Paul?

A. It runs east and west.

Q. Well, not quite thirty miles?

A. It runs right across the state.

Q. From east to west?

A. From east to west, yes, sir.

Q. And this stock that went to Chicago went from south of that point?

A. South of those points, yes sir.

Q. What is the distance to Chicago from the southern line of Minnesota and these various points concerning which you have testified, as to south St. Paul?

A. Please name what points you mean.

Q. Well, take——

A. Beaver Creek?
Q. Beaver Creek.
A. 571 miles.
Q. To Chicago?
A. Yes sir.
Q. Over what road?
A. Over the North Western.
Q. And how far is it from St. Paul, how far to St. Paul from there?
A. 219 miles.
Q. Take a point on the Minneapolis and St. Louis that you spoke of?
A. Well, there is another point, Boyd, 158 miles into St. Paul.
Q. And how far to Chicago?
A. 571.
Q. How far is it to Chicago from the place where the Chicago and Great Western crosses the State line, which you say is 120 miles from St. Paul?
A. 368 miles. Wait a minute, please; yes, that is right, about 368 miles.
98 Q. Aren't you mistaken? Isn't the distance from Chicago to St. Paul only 420 miles?
A. It is 318 miles.
Q. As I understand you then all or nearly all of this live stock moved into Chicago over this longer distance has come into South St. Paul, although you include in receipts at South St. Paul all the receipts from Northern Minnesota none of which went to Chicago?
A. No, sir, it is a comparison between competitive territory.
Q. Well, you say something over 9000 cars went to Chicago?
A. 9305 to Chicago and 5341 into South St. Paul. Of course I have got it segregated again as far as cattle, hogs and sheep are concerned.
Q. Well, then, give it in that way.
A. The number of cattle into St. Paul, 38,574; into Chicago 68,133; hogs into St. Paul 292,451; into Chicago 372,273; sheep into St. Paul, 22,117; into Chicago 121,314.
Q. All these shipments came from this territory that you have spoken of?
A. Yes, south of the H. & D. Division of the Milwaukee.
Q. Can you tell how close to South St. Paul on any of these lines, the shipments to Chicago began?
A. Say that once more.
Q. How close to St. Paul are there any stations on these various lines from which shipments were made to Chicago?
A. That I cannot tell you from the statement.
99 Q. You cannot tell that?
A. No sir.
Q. As a matter of fact there were shipments to Chicago from nearly all of the stations south of the line you have mentioned, were there not?
A. Yes, sir.

Mr. MILLS:

Q. Have you got the information in the office, Mr. Yapp, from which you could tell how close these shipments were made to St. Paul?

A. I could find that out as soon as I get the statement from the railroad companies. As soon as I get that I will be able to give you all the information you want.

Mr. SEVERANCE:

Q. Mr. Yapp, will you state how the rates from equal distances beyond St. Paul into St. Paul, that is the portion of the through rate to Chicago from points west into St. Paul, compares with this proportional into Chicago from South St. Paul?

A. I don't quite understand the question.

Q. Take points of origin of stock, live stock, northwest of St. Paul.

A. Yes sir.

The COURT: If you will get back there and make him talk up loud, then I can hear him. Make him talk loud, that is the point.

Mr. SEVERANCE:

Q. I asked you what the relation was between the proportion of the through rate to Chicago from points west and northwest of St. Paul, accruing to the lines west of St. Paul, what proportion that
100 bears to the distance between St. Paul and Chicago. You have stated that the proportional between South St. Paul and Chicago was as low as 13½ cents in some cases and then it ran up to 15. What would the rate be on that through shipment, higher or lower?

A. Well, I would have to explain. You take a total——

Mr. MILLS: You will have to talk louder and slower.

A. (Continuing:) Now, for instance, take a point like Frazee on the Northern Pacific. The distance into St. Paul is 194 miles and the cattle rate is 16 cents.

Mr. SEVERANCE:

Q. Through rate to Chicago?

A. 614 miles, 31½ cents so that the difference between the two will be the difference between 16 and 31.

Q. Then it is 15 cents on that particular shipment from St. Paul to Chicago, 400 miles, and 16 cents from Frazee to St. Paul, 194 miles?

A. Yes, that is it.

Q. Now, is that a pretty fair sample of those rates?

A. I can give you plenty of them.

The COURT:

Q. What does that 16 cents mean?

A. 16 cents means the cattle rate into St. Paul.

Q. What is the rate from that point to Chicago?

A. It would be the difference between that and 31½ cents.

Mr. SEVERANCE:

Q. The through rate from Frazee to Chicago is 31½ cents and from Frazee to St. Paul it is 15 cents. What line of road is that on?

A. The Northern Pacific.

101 Q. Then the Northern Pacific Railroad receives 16 cents for hauling that stock into St. Paul?

A. Yes, sir.

Q. And the connecting road hauls it into Chicago, 400 odd miles for 15½ cents additional, is that right?

A. Yes sir.

Q. Give us a few more samples.

A. Take a point in the northern part of the State, take Gary, for instance; that is on the line of the Northern Pacific too. The through rate to St. Paul on cattle is 19½, and to Chicago is 35 cents.

Q. So that the 15½ and the 19½ to St. Paul—how far iss Gary from St. Paul?

A. 259 miles.

Q. 150 miles less than the distance to Chicago?

A. It is 670 miles into Chicago.

Q. Give us some more.

A. Now, here is Barnsworth on the Great Northern. The rate on cattle into St. Paul is 17¾, and into Chicago 36.

Q. In that case the rate through St. Paul to Chicago is a little higher?

A. Yes sir.

Q. How far is that place from St. Paul?

A. 219 miles.

Q. About half the distance to Chicago?

A. It is 639 into Chicago.

Q. Give us one or two more places, larger places; take Fergus Falls.

A. From Fergus Falls the rate into St. Paul is 16¼ and into Chicago 35.

Q. Where is that from?

A. Fergus Falls.

102 Q. On the Great Northern?

A. Yes, sir.

Q. And also the Northern Pacific?

A. Yes, sir.

Q. So that so far as there is any competition between the Great Northern and the Northern Pacific you have the benefit of it into St. Paul?

A. Yes sir.

Q. Take Crookston.

A. Crookston, the rate on cattle is 20 cents and to Chicago 35¼.

Q. 20 cents to St. Paul?

A. And 35¼ to Chicago.

Q. How far is Crookston from St. Paul?

A. 300 miles.

Q. And the rate is 20 cents for the 300 miles and 15¼ for the additional 400 miles?

A. 15¼.

Q. Are these fair examples that you have given?
A. Yes, and I can give you them anywhere over the map.
Q. When you go further west and get out into North Dakota and Montana the proportional lines, to St. Paul and Chicago, the proportional grows smaller, does it not, running down to the figure that you have named, 13½ cents in some cases?
A. Well——
Q. As you go further west, getting out into Montana and North Dakota the proportional between St. Paul and Chicago on freight shipments grows less?
A. It would get less, yes sir.

103 Redirect examination by Mr. MILLS:

Q. Take that other map that you have got there and state to the court what it is?
A. This is a statement showing the number of cattle and calves and hogs and sheep listed for taxation from the year 1898 to 1904, inclusive, and also the receipts of cattle and calves and hogs and sheep at South St. Paul during the same period.
Q. By counties?
A. By counties, yes sir.
As a practical illustration of the map it may be interesting if you take the extreme south eastern portion. Now, Houston County shows 26,704 head of cattle listed for taxation. South St. Paul did not get a car load, did not get a single head of cattle. Fillmore County which is next had 32,992 head of cattle listed for taxation in 1904; St. Paul got 21 head out of it. There are some counties with 31,783 listed for taxation and only 252 head came into South St. Paul stock yards. 41,000 in Freeborn County and only 318 head into South St. Paul.
The COURT: What year is that?
A. 1904.

Mr. SEVERANCE: I would like to have him put all those in.
Mr. MILLS: The map was in evidence before and it will be again.

The COURT: That is with the present rate between those points and St. Paul existing?
104 A. And that was the result.

Mr. MILLS: I don't wish to encumber the record with the map on our part excepting that I would like to have the statement made from the map and submitted to the court and use the map on argument for illustration.
The COURT: Let that be done.

Mr. SEVERANCE:

Q. You have shown that from Houston County there were no cattle sent from St. Paul?
A. Yes sir.
Q. And from Fillmore County only 21 head?
A. Yes sir.

Q. Those are counties in the territory where St. Paul is in competition with Chicago, are they not?
A. Yes sir.
Q. Is there any other ultimate market for cattle from those places except Chicago, other than South St. Paul?
A. Chicago and South St. Paul would be the principal ones.
Q. They are on lines of road running to Chicago?
A. Yes, sir.
Q. On the Milwaukee and St. Paul Road?
A. Yes sir.

Mr. COWAN:

Q. Do you attribute the fact that no cattle were shipped into South St. Paul from those counties, to the adjustment of the freight rates?
A. They certainly had something to do with it. It looks
105 very strange considering it is the very best portion of the state for raising cattle that we do not get any of them into South St. Paul.
Q. Do those people in those counties desire lower rates?
A. I never have inquired.
Q. Those are rates that were agreed upon between your Commission and the railroads?
A. Yes sir.
Q. And upon the rates you agreed upon there has not been one car load moved from one county and only 21 head from another?
A. Yes, sir.

The COURT:

Q. How far is it from this Houston County to St. Paul?
A. Well, it will be a little more than 130 miles, it will average 150 or 160 miles.
Q. How far is it from that same town to Chicago?
A. To Chicago, 320, 329 and 315.

Mr. COWAN:

Q. What is the rate from Chicago to that point and to the——
A. Shall I give you a point?
A. Well, from that county, take the average of the lines right through.
The COURT: Is Roundsville in that county?
A. No sir, that is further off. Peterson, for instance, the rate into St. Paul is 15,161 miles of road and the rate into Chicago is 21 cents, 24 and 25.

Mr. COWAN:

Q. 21 and 24 and 25?
A. Yes sir.
Q. What do you mean by 24 and 25?
A. Why, the rate of cattle, hogs and sheep.
106 Q. 21 cents is on what, cattle?
A. 21 cents on cattle, 24 on hogs and 25 on sheep.

The COURT:

Q. It is less to St. Paul than it is to Chicago?
A. Yes, sir.
Q. Well, why don't cattle go to St. Paul then?
A. Well, they don't go.
Q. Yet they have to pay a greater rate to Chicago?

Mr. COWAN:

Q. Now, you say that South St. Paul does not kill enough stuff for consumption in the St. Paul district?
A. Yes sir.
Q. That being so why is it that the live stock can move cheaper to St. Paul, that it don't go there, if it can move there cheaper? Is it because of your rate or is it because of the fact that there is very little competition at that market and practically only one concern killing cattle?
A. It is well known that there is not the competition at South St. Paul market that there is down in Chicago, and the idea is that the shippers down there, in many instances would prefer to send their stuff to Chicago because the competition is greater down there and that is about the only thing.
The COURT: Chicago is a better market?
A. A better market, yes sir.

Mr. COWAN:

Q. Is not that true of the other shipments as well? The better market is a better market for shippers from one county as well as from another county, isn't it?
107 A. Yes sir.
Q. Now is it a fact or not that packing house products and dressed meats are shipped from South St. Paul to Chicago?
A. To Chicago?
Q. Yes.
A. Well, I don't know, I can't answer that question, I hardly think so.
Q. Are they shipped through Chicago to points in the east?
A. No, they go over the Northern route principally.
Q. Have you investigated to determine whether that is the fact with this reduced rate from St. Paul for live stock products and dressed meat from St. Paul to Chicago or through Chicago?
A. No, they are shipped from St. Paul principally to supply the territory around Minnesota.
Q. I would like to know whether you have investigated to ascertain whether the railroads do in fact ship dressed meat and packing house products to and through Chicago from South St. Paul?
A. No, I have not inquired into that.
Q. You don't know?
A. No.
Q. Did the railroads supply you with data in reference to shipments of dressed meat and packing house products as well as they did of live stock?
A. No.

Q. You said they filed this data as statistics in your office?

A. Yes, that was in connection with the railroad rates and the number of head of cattle which we asked for, how many had been received in Chicago and they gave us the information.

108 Q. Are they required to furnish you information relative to their Inter State transactions?

A. Well, they do it as a matter of courtesy when we ask for it.

Q. That is not a requirement of law?

A. No.

Q. Are you certain that dressed meats and packing house products moved via the Lake East?

A. Yes sir.

Q. To what extent?

A. I cannot answer that question, I cannot answer as to how much.

Q. How did you get the information that that stuff moved by way of the Lakes?

A. Why, I got that from Swift & Company.

Q. What?

A. From Swift & Company.

Q. From Swift & Company?

A. Yes, sir.

Q. Did they give you information about the movement by rail eastward also?

A. No.

Q. Did you ask for it?

A. No, I cannot call to mind that I did. It is a long time ago and I cannot recollect what I asked for at the time.

Q. Is it a fact then that dressed meat and packing house products move out of Chicago into St. Paul territory?

A. Well, I cannot answer that either. I presume they do, that they come from Missouri territory and I presume that they come from Chicago.

Q. Are both points with respect to the movement in and the movement out that you have now defined—in reference to that

109 where did you get your information?

A. From Swift & Company.

Q. And that was only to the effect that there was a movement by lake but you don't know how much there is of it?

A. I don't know how much it was, but I know it goes that way and a large quantity of it goes into the state of Minnesota and the surrounding territory for the purpose of supplying what they do not supply in South St. Paul.

Q. Is there enough produced in Minnesota that if they should kill it, it would supply the demand?

A. Is there enough produced?

Q. Yes.

A. Yes.

Q. Is it not a fact that, because of the high rate of freight agreed to by your Commission, it moves east?

A. Well, that may be a matter for further investigation on the part of our Commission yet.

Mr. SEVERANCE:

Q. Mr. Yapp, Swift & Company you have already stated is the only one of the large packers having a slaughter house in Minnesota?

A. Yes sir.

Q. Isn't it a fact that Armour & Company, Schwartschild & Sulzberger, and the Armour Packing Company and the National Packing Company all have distributing stations at various points in Minnesota which are supplied from Chicago, Kansas City and Omaha?

A. Yes, sir.

Q. The fact is that the farmers in Minnesota raise the hogs and cattle which are shipped through to Chicago, manufactured
110 into packing house products and fresh meat and shipped back up into Minnesota to sell, isn't that true?

A. Yes, sir.

Mr. MILLS:

Q. Judge Cowan asked you the question a few minutes ago about the rate. Now, is it not a fact that the Minnesota Commission now have under consideration all the rates in Minnesota on grain and merchandise and live stock?

A. Yes, sir.

Q. And a proceeding pending before them?

A. Yes sir.

Q. St. Paul is considered only 150 miles further from the seaboard on account of Lake Superior, than Chicago, is not that a fact?

A. About 156 miles.

Mr. SHAVER:

Q. How many packing houses are there at St. Paul?

A. Do you mean slaughter houses or storage houses?

Mr. SHAVER: Well, storage and packing houses.

Mr. SEVERANCE: A storage house would not be a packing house.

Mr. SHAVER:

Q. Well, how many packing houses?

A. I can call to mind only three, Swift and Brunsen and McCormick's.

Q. How many in Chicago?

A. Well, I don't know, quite a number of them.

Q. Chicago is a much more desirable market than St. Paul,
111 is it not?

A. Well, it is a larger market and there is greater competition.

Mr. SEVERANCE: The government contended the contrary in another proceeding you have got in this court.

Mr. SHAVER:

Q. Would not the Minnesota stock raisers prefer to ship their stock to Chicago rather than St. Paul?

A. I did not catch that.

Q. Would not the Minnesota stock raisers prefer to ship their stock to Chicago rather than St. Paul?

A. Well, some do and some don't. Some think they are quite as well off.

Q. Those that do not, why do they not?

A. Some of them think they are just as well off by sending it into St. Paul, shipping it there.

Q. You say all the rates coming into Chicago are proportional rates. All the shipments practically that come to Chicago from St. Paul and that territory are all proportional rates?

A. Yes, sir.

Q. Practically none come in on a local rate?

A. No, I don't think so.

Q. Isn't that because the local rates are so high on stock as compared with the proportional?

A. Well, I don't know. It gives the people a choice between the two markets, that is the idea.

Q. Why are those local rates established and maintained
112 if stock does not move on them?

A. The proportional rate would apply from the South St. Paul market but it would not apply to that intermediate territory and the proportional rate would be too low to take it from that intermediate territory.

Q. The local rate applies to the intermediate territory between St. Paul and what point?

A. Between St. Paul and all points down south of there. It will go down to within the neighborhood of about fifty miles of St. Paul.

Q. Does any stock come from that intermediate territory on the local rates to Chicago?

A. I cannot answer that question without the statements which are being prepared and they are not now before me.

Mr. COWAN:

Q. I desire to know if you call a station in those counties which ship nothing to St. Paul, intermediate between St. Paul and Chicago?

A. No, those rates down there are very different to what they are around the territory in reference to which this gentleman asked me. When you get down to that territory you get lower rates down there, 21½ cents and 21 and then it gradually scales up to 25 and when it touches 25 it runs up as far as St. Paul.

Q. Now, a shipment from St. Paul, may it not pass down through those lines to Chicago?

A. Some of it, yes.

Mr. SEVERANCE: A shipment from Chicago to St. Paul would not go down through Houston County, would it?

A. No.

113 Mr. COWAN: I am asking if it moves through those points there. Nothing is shipped to St. Paul.

The WITNESS: Now you take the Chicago Great Western——

Mr. SEVERANCE: None of the other lines go through there.

Mr. COWAN:

Q. Do you know what the rate is on dressed meat on packing house products north from St. Paul and west thereof?

A. No.

Q. I have a tariff before me that shows that the rate on fresh meat from St. Paul to Chicago is 27. It is likely that it would move on the 27 cent rate when it can move so much cheaper?

A. I don't know, I cannot answer that question.

Q. You answered a while ago that it actually does move from Chicago into that territory, to supply it.

A. Yes, it comes up from Chicago.

Q. Isn't that in very small proportion to what comes from the Missouri River?

A. I don't know, I cannot give you the proportion.

Q. How did you come to find out that it comes that way and yet you have no idea about the relative quantity that comes?

A. I can only tell you that my information comes from Swift & Company at the time, in 1902 and 33 per cent. of their dressed beef came up to St. Paul, that they had not got from the Missouri River and Chicago markets, that they had not got sufficient

114 to take care of the local territory.

Q. And it was supplied from the Missouri River and Chicago?

A. Yes, but I cannot tell you just what quantity came from each place.

Q. Now, the rate from Missouri River points appears to be 20 cents on fresh meat and 27 cents from Chicago.

A. Yes.

Q. And it is altogether likely that the great bulk of it would move from the Missouri River to supply that territory rather than clear back from Chicago?

A. Well, I don't know. I am simply telling you what I have been informed on the authority which I got.

115 Redirect examination.

By Mr. MILLS:

Q. Just for the information of the Court, about this proportional rate, stuff is shipped in from the Northern part of the State or from Montana to St. Paul Stock Yard, and then it is shipped out to Chicago on a proportional through rate?

A. Yes, sir.

Q. Now, if that stock there that was shipped is killed in South St. Paul, why the proportional rate is filled up with other stock?

A. Generally speaking; yes, sir.

Q. That is all, sir.

Mr. MILLS: That is the case for the Commission, if the Court please, with the understanding that I may read from the Minnesota laws.

The COURT: That closes your case?

Mr. MILLS: That closes the Commission's case except additional statements to be brought down and that I may read from the Minnesota laws.

The COURT: What next?

GEORGE H. CROSBY, called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

116 The COURT: What is your name?

A. George H. Crosby.

Mr. BAXTER:

Q. Mr. Crosby, what is your occupation?

A. I am freight traffic manager of the Chicago, Burlington & Quincy Railroad Company.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. Since 1876.

Q. With what railroads have you been connected and in what capacities?

A. Practically all that time with the Burlington or allied lines in various capacities, clerk, assistant freight agent, agent, assistant general freight agent, freight agent, assistant freight traffic manager and as at present, freight traffic manager.

Q. During what portion of that time have your duties had relation to the making of freight rates?

A. Well, something over 25 years.

Q. And those freight rates have been made in the sectional — country in controversy in this case, have they?

A. Largely, yes, sir.

Q. I wish you would file as Exhibit No. 1 to your testimony the statement showing correctly the rates in cents per hundred pounds now charged on cattle, hogs, packing house products and fresh meats respectively, car loads, to Chicago, Illinois, from the following points, namely, Kansas City, Missouri, St. Joseph, Missouri, Atch-

117 ison, Kansas, Leavenworth, Kansas, Council Bluffs, Iowa, Omaha, Nebraska, South Omaha, Nebraska, Nebraska City, Nebraska, Sioux City, Iowa, St. Paul, Minnesota, or South St. Paul, Minnesota, Ottumwa, Iowa, Des Moines, Iowa, Marshalltown, Iowa, and Cedar Rapids Iowa, respectively.

Mr. BAXTER: Those are the points, may it please the Court, that are mentioned by the Commission in the second bill specified.

The COURT: What is the first part of that question?

Mr. BAXTER: I want him to file an exhibit showing correctly the present rates from those points to Chicago.

The COURT: What kind of rates, on packing house products and live stock?

Mr. BAXTER: Yes, sir, fresh meats and hogs—on the different commodities named by the Commission.

The COURT: Answer the question.

The WITNESS: I have the file here (producing paper), with the exception of Cedar Rapids and Marshalltown; we do not serve those points and I did not include those in this statement.

Mr. COWAN: Have you a copy you could loan us?

The WITNESS: I have only that one copy.

(The document produced by the witness was admitted in evidence and marked "Crosby's Exhibit 1.")

117½ EXHIBIT NO. ONE.

Statement Showing Rates in Cents per Hundred Pounds on Cattle, Hogs, Packing House Products, and Fresh Meats.

To Chicago From	Cattle.	Hogs.	Packing house products.	Fresh meats.
Kansas City				
St. Joseph	23½	23½		
Atchison	*b* 20	*b* 20	20	20
Leavenworth	*c* 18½	*c* 18½	*a* 18½	*a* 18½
Council Bluffs				
Omaha				
South Omaha	23½	23½	*a* 18½	*a* 18½
Nebraska City				
Sioux City	25	23½	20 *a* 18½	20 *a* 18½
St. Paul	25	27	15.7	17
South St. Paul	20	*b* 17½	*a* 14.5	*a* 15.7
Ottumwa	22	21	16	
Des Moines	22	23½	13½	

(*a*) Destined east of Illinois-Indiana State line.
(*b*) Applies on shipments originating beyond.
(*c*) When originating beyond and destined beyond the Illinois-Indiana State line.

118 Mr. BAXTER: I will furnish you a copy when I get through.

Q. State whether the rates on cattle and hogs set forth in Exhibit 1, which you have just filed, are just or unjust, reasonable or unreasonable, and state your reasons for any opinion you may express.

Mr. COWAN: I enter formal objection to that, that that invades the province of the Court.

The COURT: The objection is overruled.

Mr. COWAN: I concede the objection is a mere matter of form.

The WITNESS: I think those rates are fair and reasonable when you consider the service performed and the conditions under which the rates are made.

Mr. BAXTER:

Q. State those conditions, Mr. Crosby?

A. Well, it is a matter of competition between carriers and markets that establish these rates.

Q. How do those rates compare with rates for similar distances on other traffic than cattle and hogs?

A. Well, they are less than those.

Q. How do they compare with rates on live stock from other sections of the country to other markets for similar business?

A. I think they compare favorably, that is, they are not out of line to any extent with what prevails in other sections of the country.

119 Q. Please file as Exhibit No. 2 to your testimony a statement for the year ending June 30th, 1905, showing:

First, total freight earnings of your company;

Second, the earnings of your company from cattle;

Third, earnings of your Company from hogs;

Fourth, earnings of your company from packing house products;

Fifth, earnings of your Company from fresh meat;

Sixth, earnings of your Company from other perishable freight?

A. I have such a file here (producing paper).

Q. How does the amount paid by your Company for losses or damage to cattle or hogs and for injuries to persons in charge of cattle or hogs compare with the amount paid by your Company for similar claims in regard to perishable commodities?

A. Well, for the year ending June 30th, 1905 it paid out $28,446. loss and damage to cattle. For hogs, $7,982; personal injuries to attendants in charge of live stock $5,345; a total of $41,773.

For loss and damage to all other perishable freight, including packing house products and meats which we handle, approximately, $13,600.

Q. Are or are not the rates on cattle and hogs mentioned in your Exhibit No. 1 affected by competition, and if so, to what extent?

The COURT: Just a moment; what per cent. was that in

119½ EXHIBIT No. 2.

For the Year Ending June 30, 1905.

(*a*)	Total freight earnings of our Company.....	$43,346,403.00
(*b*)	Total earnings of our Company from cattle...	3,157,854.00
(*c*)	Total earnings of our Company from hogs....	1,661,305.00
(*d*)	Total earnings of our Company from P. H. P..	886,380.40
(*e*)	Total earnings of our Company from Fresh meats	941,331.00
(*f*)	Total earnings of our Company from other perishable freight.....	1,710,339.67

120 your last question?

A. That was about one-third on other perishable freight compared with what it cost us on live stock; that is we paid out——

The COURT:

Q. What per cent. was there on live stock, as you figured that out, on the amount of business done?

A. No, sir, that has not been figured.

The COURT: Go ahead.

Mr. BAXTER:

Q. Are or are not the rates on cattle and hogs mentioned in your Exhibit No. 1 affected by competition, and if so, to what extent?

A. They are affected by competition. They are regulated by competition, competition as between carriers and as between markets.

Q. Did the number of cattle and hogs produced in the territories affected by the rates on cattle and hogs mentioned in your Exhibit No. 1 in this case increase or decrease during the period between 1900 and 1905, both inclusive?

A. I have not been able to get any very good data beyond 1903; but I have taken the report as rendered by the department of Commerce and Labor which shows the following for the month of June, 1905:

Received at Chicago 236449 head of cattle;
42427 head of calves;
121 625,377 head of hogs;
At Kansas City, 128,272 head of cattle;
14,249 head of calves;
247,593 head of hogs;
At St. Louis 117,494 head of cattle and calves;
Hogs 227,879;
Omaha, cattle and calves, 73,306; hogs, 301,289;
St. Joseph, cattle, 29,628; calves, 2,361; hogs, 216,818.

That makes a total for those five markets for the month of June, 1905, cattle and hogs, 2,266,142 head. Calves should also be included in that.

For the same period in 1904, 2,069,108.

1903, cattle and hogs, 2,022,324 head.

For the six months ending June 30, 1905, there was received at Chicago, 1,570,597 head of cattle; 224,482 head of calves; 4,172,370 head of hogs.

At Kansas City, 750,045 head of cattle; 39,424 head of calves; 1,325,683 head of hogs.

At Omaha, cattle and calves, 426,341 head; hogs, 1,299,705 head.

St. Louis, cattle and calves, 482,373 head; hogs 1,218,802 head.

St. Joseph, cattle, 197,488; calves, 11,624; hogs, 1,011,558.

122 Total for those six months for 1905, for these five markets, cattle, hogs and calves, 12,734,492 head.

For 1904, 12,386,009.

1903, 11,459,132.

The receipts at Chicago for the six months ending June, 1903 to 1905, for cattle and calves, 1903, 1,591,902 head—that is cattle alone—calves, 140,580 head; hogs, 3,803,471 head.

For the same period in 1904 cattle, 1,570,707; calves, 157,058 head; hogs, 4,043,123 head.

For 1905, cattle, 1,570,597; calves, 224,482 head; hogs, 4,172,370 head.

These figures show an increase in the number of head, number of live stock handled at those markets, and I presume they are an index of the general condition.

Q. Mr. Crosby, I see that you give for the month of June, 1905, and for the six months ending in June, 1905, the number of cattle, calves and hogs, respectively, received at Chicago, Kansas City, St. Louis, Omaha, and St. Joseph, respectively. Have you figured out to see how much more of each class was received at Chicago than at all of the other markets you have mentioned put together?

A. No, sir, I have not made those figures.

Q. Well, that can be done. Are the through rates on

123 cattle and hogs from the points of shipment mentioned in your Exhibit No. 1 to points of final destination greater or less than the sum of the local rates between said points where the through line is made up of two or more railroads?

A. They are less.

Q. What is the established minimum car load rate for cattle and hogs, respectively, on your road and how does the loading of cattle and hogs on your road compare with that minimum?

A. The thirty-six foot cars are generally used nowadays in handling live stock, and our minimum in the territory in question, that is, in territory on and east of the Missouri River, and for that matter in Kansas and Nebraska on cattle in a 36 foot car, is 22,000 pounds to the car. Hogs in single deck, thirty six foot cars, 17,000 pounds. Our records for the fiscal year ending June 30th, 1905, as furnished to me by our auditor, show that the cattle that we handled during that period averaged 23,000 pounds to the car, hogs in single deck cars, 17,000 pounds, about the minimum.

Q. Well, do hogs move in double deck cars to any considerable extent?

A: They do, from the Missouri River market as between markets. For example, as from Kansas City to Chicago, or Omaha to Chicago, hogs would move in double deck cars, but in shipping to markets from the country, double deck cars are not used.

124 Q. What is the minimum on double deck cars?

A. The double deck car of hogs, where we have rates on double deck cars, the minimum is 22,000 pounds, the same as it is for a 36 foot car loaded with cattle, that is the minimum from Missouri River to Chicago, for example, on double deck cars of hogs.

Q. Will you please file as exhibit 3 to your testimony a statement showing comparison between the revenue received by your road on cattle and hogs, car loads, and the revenue received by your road on wheat, tropical fruit, vegetables, classified freight in car loads, selecting for said comparison some fairly representative portion of your road on which said kinds of traffic actually move?

A. I have such an exhibit.

Q. Will you please file it?

A. Yes sir (producing paper which was marked "Crosby's Exhibit No. 3 and filed with the Court).

124½ EXHIBIT No. 3.

The local rate on cattle and hogs in D. D. cars, Kansas City to Chicago is 23½ cents, when originating beyond the Missouri River, the rate is 20 cents, and when destined east of the Illinois-Indiana State line 18½ cents. These rates on cattle and hogs the latter in D. D. cars, based upon the established minimum weights of 22,000 lbs. would produce respectively the following figures per 36 foot car, viz: $51.70, $44.00 and $40.70. On hogs in S. D. cars the figures would be based upon minimum weight of 17,000 lbs., $39.95, $34.00 and $31.45, respectively per 36 foot car. Against these rates per car take the wheat rate, which from Kansas City to Chicago is 16 cents per cwt. Wheat will easily load to 60,000 lbs., and at the rate stated, would produce a rate of $96.00 per car.

The tropical fruit rate Kansas City to Chicago is 45 cents per cwt. in carloads, and a car containing 30,000 lbs. would yield the Carrier $135.00.

Vegetables pay a rate of 22 cents per cwt., Kansas City to Chicago, which at 30,000 lbs., a fair average load, is equal to $66.00 per car.

The fifth class rate Kansas City to Chicago is 27 cents per cwt. and if a car containing that class of freight were loaded to 30,000 lbs., it would produce a rate per car of $81.00.

Scrap iron pays a rate of 15 cents per cwt. and will easily load to 60,000 lbs., thus making the rate per car $90.00.

Broom corn pays a rate of 45 cents per cwt. and at 16,000 lbs. per car, the earnings would be $72.00 per car.

Q. Without taking up your time to read all of it, will you just compare the revenue on cattle and hogs with the revenue on some one commodity that you have mentioned there without mentioning them all?

A. We will take a car load of wheat, for example. The rate on wheat from Missouri River to Chicago is 16 cents.

Mr. SEVERANCE: Speak louder, please.

125 A. The rate on wheat from Missouri River to Chicago is 16 cents. The cars that we handle with live stock are cars of 50 and 60,000 pounds capacity. Take a car load of wheat of 60,000 pounds and the revenue is $96. Under our minimum rate on live stock at the local rate from Missouri River to Chicago of 23½ cents, for example, or at the proportional rate of 20 cents, the rate at the latter would be $44—and $47.40 at the 23½ cent rate.

Mr. BAXTER:

Q. How do the rates on cattle and hogs——

The WITNESS: Excuse me—$51.70 for the 36 foot car at the local rate of 23½ cents. Our rate on scrap iron from the Missouri River to Chicago is 16 cents a hundred,—or 15 cents a hundred,—we can load a stock car to its capacity with scrap iron, 60,000 pounds and receive $90 against $44.

Q. How do rates on cattle and hogs set forth in your Exhibit No. 1 compare with rates charged by other railroads in the same and other parts of the United States for the transportation of cattle and hogs from other points of shipment to other points of destination, the distance and other circumstances and the conditions being relatively considered?

A. Well, they are less in some instances and about in line with what is charged elsewhere in other instances.

126 For example, the Minnesota distance tariff for 490 miles, which is practically the distance from the Missouri River to Chicago, the distance from Southwestern Missouri River points, our distance makes a rate of $85.20 for a 36 foot car. The Iowa tariff, supposed to be the lowest tariff in the country, 490 miles, the distance tariff for the rate on cattle would be 25.23 cents per hundred weight; on hogs, 22.12 cents per hundred weight. In Kansas, for 490 miles, cattle, 31 cents per hundred weight; hogs, 39½ cents per hundred weight. Missouri has a distance *of* tariff promulgated by the Commission. The maximum distance shown is 400 miles. Their rate on cattle for that distance is 21 cents a hundred; hogs, 24 cents. If the rate was extended to the Missouri River distance on that basis, the rate on cattle would be about 25 cents a hundred.

Q. Well, if you except the rates from Chicago to New York or other Eastern points, do you know of any rates in any part of the United States on cattle and hogs, for a distance of, say, 450 miles that are as low as 23½ cents per hundred?

A. Well, I don't recall anything of that kind; I don't bear in mind anything of that kind.

Q. Have the rates on cattle and hogs set forth in your Exhibit 1 been so high as to prevent the shipment of cattle and hogs, or have

cattle and hogs been shipped with profit under such rates
127 and have they or not moved freely in competition with cattle and hogs moved to the same markets from other portions of the United States?

A. I do not think the rates have had any effect on the amount of live stock at all. In the face of the rates that are established today, new markets have sprung up, and are in existence. Markets have been established as the production apparently warranted them, and the rates I should say, have not in any way retarded the development of the industry.

Q. Is the service rendered by railroads in the transportation of cattle and hogs more or less expensive than the service rendered in transportation of packing house products?

A. I think it is more expensive—live stock is of more of a perishable character than packing house products; we have to provide special facilities for loading it and we have to provide places for, unloading it and feeding it, and taking care of it in transit; we provided facilities for handling live stock that we do not for any other class of freight.

Q. Is the service performed by railroad companies in the transportation of ordinary dead freight other than live stock products more or less expensive than the service rendered in the transportation of packing house products and fresh meats?

128 A. Well, I think the two most expensive commodities that we handle are live stock and its products. The dead freight can be handled at much less expense than either.

Q. In proportion to the service performed, is the net revenue received by railroads for the transportation of cattle and hogs greater or less than the net revenue received by them for the transportation of packing house products and fresh meat?

A. I believe we can handle packing house products under the present condition of affairs for less money than we can live stock. I believe we have less net money when we get through handling our live stock than we do with the products.

Q. In proportion to the service performed, is the net revenue received by the railroads for the transportation of cattle and hogs greater or less than the net revenue received by them in the transportation of ordinary dead freight?

A. When you consider the service, I think it is less—it is less.

Q. Are the rates on cattle and hogs set forth in your Exhibit No. 1 so low as to induce shippers to ship by rail or are they so high as to force shippers to drive their cattle to market by foot?

A. I do not think they are any cattle driven to the market from any of this territory that is covered by this investigation or hearing.

129 Q. Have the rates on cattle and hogs had the effect to restrict or extend the scope of territory in which cattle are raised?

A. I do not think it has any tendency in that direction at all.

Q. Have the rates had the effect to increase or decrease the number of markets to which cattle and hogs are shipped for sale?

A. The markets have increased. For instance, originally, they practically only had one market for this Western territory, Chicago. We have new markets on the Missouri River that have sprung up in the last ten or twenty years. They have another one at St. Paul and others in the interior of Iowa, Ottumwa, Des Moines, Cedar Rapids and Marshalltown. St. Louis has begun to be more of a factor as a live stock market in the last few years than it has been for a few years previous. The markets seem to come to life as fast as the conditions seem to demand their existence.

Q. How does the revenue on cars loaded with coal, iron or other low grade traffic compare with the revenue derived by your company from the transportation of cattle and hogs if carried in cars of the same capacity between the same points and for similar distances?

A. The revenue is greater on these commodities because you can load your cars to their capacity, you can get them loaded. Our rate on hard coal from Chicago to the Missouri River is
130 $2.50 a ton. We can load that car, if a 60,000 pound car, with 60,000 pounds and the revenue is $75, almost double what it would be on live stock.

Q. Take the case of rags, do you carry them?

A. With rags it is the same way. We handle lime between Missouri River and Chicago, and the rate is 16 cents a hundred. That is a commodity that can be loaded 60,000 pounds, $80 per car. Take paper scrap rags, these cars can be loaded 50,000 pounds. The rate is 18 cents, which would bring in a revenue of $90. I could go on and cite similar instances.

Q. Have you prepared a paper there, a statement showing those comparisons?

A. Yes, sir, that is included in Exhibit No. 4, several instances there of the difference in revenue—I mean Exhibit No. 3, I should have said there.

Q. Will you now file as Exhibit No. 4 to your testimony a statement showing the rate charged by your Company for cattle and hogs, respectively, to Chicago, Illinois, from each intermediate point on your line between St. Paul and Missouri River points on the one hand, and Chicago on the other?

A. Here are our tariffs naming the rates in all this interior country east of the Missouri River and south of St. Paul and Minneapolis to Chicago.

131 (The witness here produced a document which was marked "Crosby Exhibit 4" and filed with the Court as evidence on behalf of the defendant).

Q. Mr. Crosby, do those tariffs show the rates from Chicago to those intermediate points on the same classes of commodities?

A. Well, these rates apply between.

Q. Well then, they would show the rates each direction?

A. Yes, sir.

Q. State whether or not a reduction of the rates on cattle and hogs at intermediate points east of the Missouri River would have any effect on the revenues of your company, and if so, what?

A. A reduction such as is proposed or asked for would, I think, approximate about 2½ cents a hundred or 50 cents a ton. For the fiscal year ending June 30, 1905, we handled 382,553 tons of cattle and hogs. Fifty cents a ton on this would amount to $191,276.

Q. Now, as I understand, that would be the direct result on the intermediate territory, from reducing those rates as suggested by the Commission?

A. Yes, sir.

Q. Now, are there any indirect results that would flow from such reduction?

A. Well, a reduction might be made in these rates that would have its effect on rates from territory west of the Missouri River, such a rate could be established as would have that effect.

132 Q. For instance, if you reduced the rate from a point intermediate between Kansas City and Chicago, say it is a distance of 250 miles, if you reduced the rate from that point, what would be the effect upon people who lived 250 miles west of Kansas City, on the rate that they would want you to put in from that point to Kansas City?

A. Well, it might have an influence on that rate. It would have an indirect influence in this way: That by a reduction in the rate from this territory to Chicago we would be called upon to make reductions in rates to other markets, it would have that indirect effect, undoubtedly. There is a co-relation between all of these rates. The man who runs the Stock Yards and the packing houses at one point thinks that if the rate is reduced to his competitor, his rates should be reduced.

Q. You heard the position of the Minnesota Railroad Commission this morning?

A. Yes, sir.

Q. Have you got any roads in that part of the country that would be affected by the reductions they propose to put in?

A. Well, we would be affected slightly, the Burlington Road would.

Mr. SHAVER: The order of the Commission does not require any reduction in the live stock rate. It may be complied with by advancing the rate on products.

133 The COURT: Will you read the order again, so I will get it in my head?

Mr. SHAVER (Reading): "It is ordered that the defendants, naming them, be and each of them is hereby notified and required to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing the said unlawful relation of rates."

That is, the relation which results from making product rates lower than the live stock rates, but that unlawful relation may be done away with by advancing the product rates as well as by lowering the live stock rates, or it may be complied with by a certain advance on the product rates and a certain reduction in the live stock rates, making the two rates meet, restoring the former relation, under which they were shipped, so that the order does not necessarily require any reduction in the live stock rate.

Mr. BAXTER: The Commission quotes in its opinion the fact that a contract was made by the Chicago Great Western with the packers at Kansas City, whereby that Company obligated itself to acept these rates for a series of years, and the Commission admits under that contract the companies cannot raise it, unless the Great Western raises it none of the other companies crossing the Missouri River can raise it, there-ore we cannot raise the prod[illegible] rates, we
134 must reduce our live stock rates if we equalize [illegible].

I am trying to show now what the effect [illegible] that would be on these carriers.

Mr. COWAN: If you will permit me to suggest, I do not think Judge Baxter is exactly correct in the suggestion that the Commission admits that we cannot raise the lower rates because of the contract of the Great Western with the packers. As a matter of fact it is contended by the railroads all the way through that they cannot do that; that depends entirely on whether or not that would be a lawful contract. That they do not desire to do so is manifest. If, by making a contract they may produce an unjust relation of rates, if it results in a rate which is unlawful, or the result flowing from it is unlawful, the contract is not obligatory. But if they insist it shall be obligatory then our contention is that it carries with it the obligation to still maintain the just relation of rates so as not to produce an undue preference to one, or a prejudice to the other, and if they have made the lower rate upon a contract from which they cannot escape, or from which they do not desire to escape, it flows as one of the consequences of that act that the relation of the rates must be what would be lawful.

Previously the Commission has decided in its findings and
135 had held that the rate upon dressed meat and packing house products should not be less than upon the live stock, and the roads complied with that for a great number of years, as stated by the Commission. Now, with their eyes open, seeing that the Commission had previously held there was a certain just relation of the rates, they see fit to reduce the one—we do not think they can stand behind the claim that it would put the other below what is reasonable if they are required to maintain the lawful relation of those rates. So that by making the contract they either did one of two things: They either made an unlawful contract, that does not interfere, it being unlawful, with the advance in packing house rates in order to restore the relation of rates, or if that is a lawful contract, then one of its consequences was that if the just relation as determined by law is to be that the live stock rates shall not be higher, then the contract carried with it the obligation to do that thing, whether it would reduce it below an amount that was reasonable for the service performed or not.

Unless that were the case your Honor can readily see that by contract a railroad company could always evade the law with respect to discrimination. It would practically repeal the second, third and fourth sections of the act, if you are to hold that—because—
136 that the restoration cannot be made if it would reduce the higher rate below what is reasonable, then all the railroad

company needs to do is to make a contract for the lower rate, and then they escape that discrimination which would exist from mere publication of the rate, from that contract.

The COURT: I think I understand your position.

Mr. COWAN: Well, the Commission mentioned that the Commission does not in its decision require directly or indirectly an advance in one or a reduction in the other; it merely desires a restoration of the equality of the rate.

Mr. SEVERANCE: And that without reference to the cost of the service; that is your position?

Mr. COWAN: No, I do not say so.

The COURT: That is true if you cannot get out of the contract.

Mr. SEVERANCE: No, the Commission takes the position, or counsel takes the position, that this arbitrary relation which he says they had decreed between the one rate and the other, must be maintained irrespective of the cost of performing the service, or the risks attending upon it, and upon that we take issue.

The COURT: Your position is, that you cannot get out of the contract, but if you get out of the contract, then they say you
137 can adjust this so that you will not discriminate, against neighbors or different kinds of business, that is their point.

Mr. SEVERANCE: No, their point is irrespective of whether it costs more money to handle live stock than it does packing house products, leaving out the question of the contract entirely, they say as a complete proposition they will absolutely ignore the question of whether one is more expensive, more hazardous than another, and we have got to maintain the same relation. We say that is not a legal conclusion, that is not the law.

The COURT: I didn't understand that is their position. You can argue all that when you get to it.

Mr. SEVERANCE: That is exactly what the Commission holds, your Honor, in so many words; they emphasize it.

The COURT: Go ahead.

Mr. BAXTER:

Q. Mr. Crosby, you stated awhile ago that under the rates as existing from time to time various markets have sprung up in the West for cattle and hogs and products. Do I understand you?

A. Yes, sir.

Q. Does the existence of those markets, such as Kansas City, St. Joseph, Atchison, Leavenworth, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul—is the existence of those markets an injury or benefit to the people who produce cattle and hogs?
138 A. They are of benefit. The producer can market his live stock nearer home. He does not have to stand the shrinkage that would ensue in consequence of a longer trip to a market five hundred miles further away, for example, and again the difference in price at these markets is not based on the difference in freight rates. For example the Kansas City market is not as much less than the Chicago market for hogs and cattle as the difference in the

freight rate. The same thing is true of Omaha or the market at St. Paul.

Q. What is it based on, then, the difference in prices offered at the different markets?

A. Why, it is the law of supply and demand, to the extent that they want the business they pay for it to attract it to their particular market.

The COURT: If there were more bidders in Chicago, you think the market would be better in Chicago than Kansas City, is that the idea?

A. Well, if they need cattle here stronger than they do at Kansas City, they will pay the price to bring it here.

Q. You think it is based on competition, do you?

A. Yes, sir.

Mr. BAXTER:

Q. On that point, is it not a fact that certain firms who own the packing houses in Chicago also own them on the Missouri
139 River?

A. Yes, sir.

Q. Then, so far as the competition at Chicago is concerned, it would be a man operating in Chicago competing with himself operating on the Missouri River, is that it?

A. Yes.

The COURT: Well, not alone, there may be more competition, there may be importers in here, or exporters in here.

A. I should modify that some.

The COURT: And there might not at Kansas City.

A. At all these markets, that is, the Missouri River market as well as Chicago, there are speculators as well as exporters who buy live stock, for speculation. They buy it for shipment and hold over and sell it. For example they may think the market tomorrow for cattle will be higher than it is today and they will buy on speculation an- hold until tomorrow and see if they can make a profit on it. Then again, even with the packer in Kansas City and Chicago, the same man is desirous for some particular business at Kansas City that may cause him to pay a price in competition with himself at Chicago, to get what he wants in Kansas City.

Q. Is it true that all of the packing house products manufactured on the Missouri River come to Chicago eventually?

A. No, sir.

140 Q. Where do the balance of them go that do not come to Chicago?

A. It goes all over the world you might say.

Q. Does any of it go for export through the Gulf ports?

A. Yes, sir.

Q. Does any of it move on direct rail lines via St. Louis and that line of communication down in to the Southeast?

A. Yes, sir, it goes all over the United States, and you might say the world. It is exported from the Atlantic, through the Gulf, and through the Pacific ports. It is shipped to almost every point

of consumption in the United States, a great many of them at least.

Q. Are there any importers who do business on the Missouri River?

A. Why, exporters of products, do you mean?

Q. Yes.

A. Well, all these packers export, the Missouri River packer as well as the Chicago man, in competition with either themselves or each other.

Q. Are there any exporters on the Missouri River other than the packing house people?

A. Of the product?

Q. Yes.

A. Not that I know of, no, sir.

Q. State what terminal or switching charges are paid by your Company on packing house products and fresh meats at St. Paul and at Missouri River points.

141 A. At St. Paul we pay $2.50 per car switching, at South Omaha $2.

Mr. SEVERANCE: On products or live stock?

A. This is the product, is it not? Isn't that the inquiry?

Mr. BAXTER:

Q. Yes, packing house products and fresh meats?

A. St. Paul, $2.50 a car; South Omaha $2.; St. Joseph, $1.50; Kansas City, $3. We pay nothing at Nebraska City, we reach the packing houses direct with our own rails. We pay at Kansas City because we do not, and the same thing is true of the other points named.

Q. Are the same terminal switching charges paid by your company on cattle and hogs coming from West of Missouri River to St. Paul and the Missouri River points?

A. No, sir, the charge on live stock is different. At South Omaha, for example, we pay fifty cents a car for switching, and fifty cents a car for unloading, the expense is therefore one dollar. At Kansas City we deliver live stock to the yards ourselves, perform that service, and we pay fifty cents per car for unloading. At St. Paul we pay $2.50 per car except on range cattle, where we pay a dollar per car, where the minimum charge of ten dollars for handling less than ten cars of range cattle is made. At St. Joseph the charge is $1.00 per car.

142 Q. Will you please file a statement as No. 7 to your testimony showing the number of cars of packing house products and fresh meat received by your Company during the year ending June 30th, 1905, from St. Paul and each of the Missouri River points?

A. I will.

(Witness here produced a statement which was marked "Crosby's Exhibit No. 7." and filed with the Court.)

A recess was here taken until 2 o'clock of the same day, September 18th, 1905.

142½ EXHIBIT No. 7.

Total number of cars of packing house products and fresh meats from the Missouri River and St. Paul for the year ending with June 30, 1905:

St. Paul	118
Omaha	9,621
Kansas City	9,906
St. Joseph	12,593
Total	32,238

143 SEPTEMBER 18TH, 1905.—2 o'clock.

Court met pursuant to adjournment.
Counsel were present same as before.

Whereupon GEORGE H. CROSBY, resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. Did I ask before adjournment for statement number seven showing the number of packing house products and fresh meats received by your company during the year ending June 30th, 1905, for St. Paul and east of Missouri River points?

A. Yes, sir.

Q. Explain the nature of the contract made by the Chicago & Great Western Railway with the Missouri River packers and state what its effects have been upon the business obtained by the other railways on packing house products from St. Paul and other points for the Missouri River and east?

Mr. COWAN: I object to the explanation of the contract.

Mr. BAXTER: Explain the effect of that contract. The contract is referred to in the opinion of the commission in this case and we have not the contract.

The COURT: Was it in evidence before the Commission?

144 Mr. BAXTER: I assume that it was because they state the substance and effect of it.

Mr. COWAN: The contract was not made a part of the record and Mr. Stickney objected to it on that ground. The complainants asked for the contract and never got it and that is the reason that it is not in the record.

Mr. BAXTER: Well, I will ask you this question. We have not the contract and cannot get it. Can the railways other than the Chicago & Great Western Railway, for any reason increase the rates on packing house products and fresh meats from the Missouri River to Chicago?

A. No sir, not if they want to engage in the business.

The COURT:

Q. Why?

A. Because there is a contract with these roads in effect, 20 cents from the Missouri River to Chicago.

Q. A contract on the part of the Western Company alone?
A. Yes sir.
Q. Why can't the other companies go ahead?
A. Well, we cannot handle business between the Missouri River and Chicago at a higher rate than our competitors do.
Q. Because when one company acts you all must act?
A. The action of one will regulate that of all.
Q. That is providing you get any business?
A. Yes, of course we can go out of business.

Mr. BAXTER:

Q. I wish you to explain what is meant by local rates on packing house products and fresh meats from Missouri River
145 points to Chicago and what is meant by proportional rates from Missouri River points to Chicago.
A. A local rate applies on a shipment from a packing house in Kansas City to a concern here in Chicago, as a local shipment the rate on which is 20 cents a hundred.
If the shipment is consigned to a point east of the Illinois and Indiana line, the proportional rate of 18½ cents applies and that *is the* 18½ cents is the portion that the line from Kansas City to Chicago expects out of the through rate to the Atlantic seacoast, or some point east of the Indiana and Illinois State line.
Q. What do you mean by local rates and proportional rates from Missouri River points on cattle and hogs?
A. Well, in the case of cattle and hogs the local rate applies on a shipment made locally from the Missouri River point to Chicago, locally. The proportional rate from Missouri River to Chicago applies on business originating west of the Missouri River or beyond and is the proportion that is expected by the line from the Missouri River to Chicago on business originating west of the Missouri River or beyond it.
Q. Do you not also have a proportional rate where the live stock originates beyond the Missouri River and is destined to a point beyond the Indiana and Illinois line?
146 A. Yes, that again is business originating west of the Missouri River destined east of Chicago, for example.
Q. I wish you to state whether said proportional rates operate in favor of or against Chicago, and explain why.
A. I do not think they have any effect on the Chicago market except in this regard: the proportional rates applying from the Mississippi River to Chicago, on business originating west of that, it will make a less rate than a combination of the local rates, and to that extent it will be a benefit.
Q. A benefit to whom?
A. If you did not have a proportional rate from Kansas City to Chicago, the local rate would apply on any business originating west. Having one, it makes a less rate on that combination.
Q. And Chicago gets the benefit of that?
A. Chicago gets the benefit of that, yes sir.
The COURT: As far as the business which originates west of Kansas City is concerned, only?

A. Yes sir.

Mr. BAXTER: Name the lines, if any, which actively and effectively compete for the transportation of live cattle and hogs from Kansas City to Chicago?

A. The Chicago, Burlington & Quincy, the Chicago & Alton, the Atchison, Topeka and Santa Fe, Chicago, Milwaukee & St. Paul, Chicago, Rock Island & Pacific, Chicago & Great Western,
147 and the Wabash.

Q. Name the lines, if any, which actively and effectively compete for the transportation of live cattle and hogs from St. Joseph, Missouri, to Chicago?

A. The C., B. & Q., the Rock Island, the Great Western and the Santa Fe.

Q. Did you mention the Chicago & Alton?

A. Well, they would not compete directly for live stock. A line could be formed by way of Kansas City in connection with the Alton Road.

Q. Name the lines, if any, which actively and effectively compete for the transportation of live cattle and hogs from Atchison, Kansas, to Chicago?

A. The same lines as from St. Joe, with the possible exception of the Great Western; they don't run into Atchison, but they could form a line.

Q. Name the lines which compete from Leavenworth, Kansas, to Chicago?

A. The C., B. & Q., the Rock Island, the Santa Fe and the Great Western, and a combination could be made by way of Kansas City with any of the lines that reach from Kansas City to Chicago.

Q. Name the lines which compete for transportation of cattle and hogs from Council Bluffs to Chicago?

A. The Burlington, the Milwaukee, the North Western, the Great Western, the Rock Island, the Illinois Central.

148 Q. Name the lines which compete from Omaha, Nebraska, to Chicago?

A. The same lines.

Q. Name the lines which compete from South Omaha to Chicago?

A. The same.

Q. Name the lines which compete from Nebraska City?

A. The Burlington has a direct line from Nebraska City to Chicago. The competition is mostly between a road which can form a line by combination with any railroad from Omaha to Chicago.

Q. Name the lines which compete from Sioux City, Iowa?

A. The North Western, the Milwaukee and the Illinois Central.

Q. Name the lines which compete from St. Paul, Minnesota, to Chicago?

A. The Burlington, the North Western, the Milwaukee, the Rock Island, the Great Western and the Wisconsin Central.

Q. Name the lines which compete from South St. Paul to Chicago?

A. The same.

Q. State the population of Kansas City, St. Joseph, Atchison,

Leavenworth, Council Bluffs, Omaha, Nebraska City, Sioux City, and St. Paul respectively, as shown by the last United States census?

A. The census report for 1900 gave the following:

Kansas City	163,752
St. Joseph	102,979
149 Atchison	15,722
Leavenworth	20,735
Council Bluffs	25,802
Omaha	102,555
Nebraska City	7,380
Sioux City	33,111
St Paul	163,065

Q. State the distance to Chicago from Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Nebraska City, Sioux City and St. Paul, respectively?

A. Well, do you refer to the short line distances or our distances?

Q. Either or both.

A. The distance by the Burlington line between Chicago and Kansas City is 488 miles, short line is 458.

Mr. COWAN:

Q. On what road?

A. Atchison, Topeka and Santa Fe. St. Joseph, 470 miles, Atchison, 491 miles, Leavenworth 510 miles (the short line is 498, that is the Santa Fe again). Council Bluffs 492, short line 486. Omaha 496, short line 490, Nebraska City 496. Sioux City 509. St. Paul, Minnesota, 431, short line 409.

Mr. BAXTER:

Q. State which of these cities are located on the Missouri River and which of them on the Mississippi River?

150 A. With the exception of St. Paul they are all on the Missouri River.

Q. Are the local rates for live cattle and hogs, to Chicago the same from all Missouri River points?

A. No sir, the Sioux City rate on cattle is 25 cents a hundred as I recollect it.

Q. With that exception are they the same?

A. How is that, sir?

Q. With that one exception are the local rates the same from all of those points to Chicago?

A. Yes sir.

Q. What has caused the rate on live cattle and hogs to Chicago to be the same from all points on the Missouri River except the cattle rate from Sioux City, notwithstanding said points differ in distance to Chicago?

A. Well, the Missouri River was made a dividing line before the railroads were built to the river. As the railroads were built, roads from the east terminated at the Missouri River. Then railroads were

constructed west and through rates were made on a combination of the rates to the river and from the river east.

As the railroads increased in the western territory, railroads were built from Omaha, for example, that competed in territory with Kansas City and *vice versa*. The railroads were run in territory tributary to Omaha by one railroad that might not reach Omaha at all. They would naturally force a rate through their Mis-
151 souri River crossing in combination with a road above. All these Missouri River towns to a greater or less extent draw from the same territory and it is practically impossible to have, especially with what we term the lower Missouri River points, to have a different schedule of rates from one point than another.

Q. Do the local rates on live stock and hogs to Chicago from any point between St. Paul or the Missouri River, on one end, and Chicago on the other, exceed the local rates to Chicago from St. Paul or the Missouri River?

A. No sir.

A VOICE: Mr. Crosby, do you know what the rate into South Omaha on live cattle and hogs is from say a point say 75 miles east of the Missouri River?

A. No, I could not tell you that off hand.

Q. Well, do you know what it would be 100 miles east of the river?

A. Not to give you the exact figures, no.

Q. Or 125?

A. No.

Q. Could you, if you were here tomorrow morning, if your testimony is not concluded this afternoon, be prepared to state that?

A. Yes, I can give you that information very readily.

Q. Then I guess I will defer what questions I want to ask till Mr. Crosby is prepared to answer them.

152 Cross-examination by MR. COWAN:

Q. The rates which apply to South Omaha from interior points in Iowa are the Iowa Commission rates to Council Bluffs plus the bridge charge, are they not?

A. They are in some instances, and in other instances they are not.

Q. What is the basis of the rate to Omaha, South Omaha, from the Iowa points?

A. My recollection of the basis of the rates that we have in effect there is that we use the Iowa Distance Tariff to Pacific Junction concerning the minimum distance and add the bridge charge to that. That does not have exactly the same effect of making the combination to Council Bluffs with the bridge toll added.

Q. In other words, to ascertain what the rate would be from any Iowa point to Omaha, it would be safe to take the Iowa Distance Tariff, where that is in effect on a railroad, to Council Bluffs and add to it the bridge toll?

A. I say that is the general rule, but we happen to make an ex-

ception in our business. We do not haul that business by way of Council Bluffs.

Q. You haul it by way of Pacific Junction?

A. Yes sir.

Q. Do you have a rate from Pacific Junction to South Omaha or do you simply charge bridge toll from there?

153 A. Our basis is the Distance Tariff to Pacific Junction plus the bridge toll.

Q. If the Iowa Distance Tariff were to be reduced, that would make a corresponding reduction in your rates to South Omaha, or, if that was advanced it would make a corresponding advance?

A. Yes, it would work either way, that is it would be possible to change those rates by a change in the Iowa Distance Tariff.

Q. Now, what amount of business moves under those rates to South Omaha?

A. What is that?

Q. What amount of business moves under those rates to South Omaha?

A. Well, there is a considerable *distance* that moves. I cannot tell you what it is as compared with the whole but there is a constant movement of business from Iowa points to Omaha and various packing points on the Missouri River.

Q. Has that business been increasing or diminishing in recent years?

A. Well, I think it has been on the increase.

Q. Do you know whether or not the relative amount of the live stock shipments in a zone 150 miles wide this side of the Missouri River, which is shipped to the Missouri River towns or to Chicago, whether there is a greater or less propo-tion of it moving to either one place or the other than there formerly did?

154 A. Well, I could not give you any adequate idea of that. Where it goes to depends entirely upon the condition of the market. I have seen the stuff moved from Iowa to the Missouri River markets where there was scarcely any difference in the rate between that point and Chicago.

Q. What are the factors which, in your experience and observation and judgment formed from your years of experience, which determine where the live stock will go for slaughter? What are the factors which to your mind operate to change or to direct the course of the traffic?

A. Well, the condition of the market at these various places seems to be one of the principal factors. I have talked with men in my experience in the past in regard to handling live stock to these various Missouri River markets, where they have seemed to have a prejudice in favor of some particular market or against it, although the people who operated in that market will claim that it is just as good a market as there is any where and other people will claim it is not. It seems to be more or less a matter of prejudice, although I should imagine it would be more a question of the price.

Q. Does the rate of freight have anything to do with directing the course of the traffic?

A. Well, that is another question that is open. The prices, you can take them any day at the Missouri River markets
155 and compare them with those in Chicago and they do not depend on the difference in the freight rate apparently. The freight rate may show a difference of 20 or 15 cents, yet the market may be five, or ten or fifteen.

Q. And the difference in the freight rate may make a difference to the men because they come from points where the balance of the through rate is different by two or three cents a hundred?

A. That may be but we don't as a rule handle business, or we handle very little of it under what is termed the balance of the rate.

Q. I did not catch that.

A. I don't think that there is but a very small portion of the business handled under the balance of the rate.

Q. All the business that you bring into Omaha, which you carry on to Chicago you move on the balance of the rate, don't you?

A. Well, you do and you don't. For example, the rate on cattle from Hastings, Nebraska, to Chicago is 34½ cents and the rate from Hastings to South Omaha is 14½. A man can have the privilege of consigning live stock to Chicago and taking the privilege of the Omaha market. He starts it from Hastings consigned to "John Smith, Chicago, stop at South Omaha."

He unloads the live stock at South Omaha and if the market suits him, the stock is sold, and he pays a rate of 14½ cents
156 per hundred, and it is delivered there as marked in the consignment. If he wants to go on to Chicago, the original way bill from Hastings follows the shipment to Chicago and the charge is collected here of 34½ cents. The difference is 20 cents.

Q. Well, take a shipment from Denver or from points that take the Colorado rate over your road to Omaha, your rate is 32 cents?

A. I have forgotten whether it is 33 or 34.

Q. The rate to Chicago is 49 cents so far as the through rate—that would be 16?

A. If those figures are correct that is the balance.

Q. Isn't it a fact that practically all of the western country, practically all of Colorado, that the difference in the rate is on the Colorado common point rate—the balance is 16 cents?

A. It varies all the way from 20 down to 12.

Q. Your balance of the 12 cent rate then, that is from the Black Hills territory?

A. Yes.

Q. You ship from the Black Hills territory to Chicago and it does not have to move by Omaha?

A. No, sir, all this business that wants to come to Chicago has to go via Omaha. We don't attempt to force it that way but if it goes via Omaha when consigned to Chicago, it is at the option of the shipper.

Q. What is the direction of your live stock traffic out of
157 the Missouri River? Do you ship to markets to slaughter, west bound from the Missouri River?

A. No sir, the only business we have west bound from the Missouri River is stock cattle going into feed lots.

Q. What is the direction of the principal traffic in live stock products and dressed meats from Missouri River points?

A. Well, that is east bound and south bound. The largest percentage of it moves east, I think, so far as we are concerned at least.

Q. To what territory do these shipments go? You are shipping out of Omaha ten or twenty cars of dressed meats, and to what destination principally does that move, to points east of the Mississippi River?

A. Yes, I think most of it is for the territory east, that is of the live stock products.

Q. Have you records or statements showing the amount of packing house products and dressed meats which you shipped from Missouri River points which pass through the Mississippi gateway?

A. That is that our railroad has handled, or the total?

Q. Yes, say that your railroad handles or any other railroad if you happen to have it?

A. From south western Missouri River points for the year 1905 there were shipped to and through the Mississippi River gateway 808,067 of fresh meat and packing house products.

158 Q. Are the two separated in the figures there, the packing house products from the dressed meat?

A. Yes.

—. How much of each?

A. Fresh meat 458,221, packing house product 349,846.

Q. Have you the number respectively of car loads of each in the figures before you?

A. No sir, I have not.

Q. Now, is that statement the shipments over your road?

A. That includes all the roads reaching from southern points to the Mississippi River and beyond.

Q. Taking in Sioux City?

A. No sir.

Q. You denominate from St. Joseph down the river to Kansas City, inclusive, as southwestern points?

A. Yes sir.

Q. Have you a statement of the shipments from Omaha, Nebraska City and Sioux City, through the Mississippi River gateway?

A. Omaha, for that period 198,708 tons of fresh meat; 172,537 tons of packing house products. Sioux City 29,308 tons of fresh meat, 42,554 tons of packing house products.

Q. For what year now was that?

A. That is the fiscal year ending June 30th, 1905.

Q. Do you know whether that represents a large increase since this case was heard before the Inter State Commerce Commission, in

the shape of packing house products and dressed meats east bound through the Mississippi River gateway?

159 A. The best way to answer that is to give you the comparative figures.

Q. Well, please do that, produce the figures that you have there.

A. Southwestern Missouri River points for 1904, the fiscal year, the shipments were 453,357 tons of fresh meat and that is a falling off of practically 8,000 tons; packing house products 325,085 a falling off of 24,759 tons.

Q. Now for the previous years to '04.

A. Well, 1903 fresh meat from southwestern Missouri River points 436,385 tons; packing house products 278,009.

Q. How much for the year previous, have you got 1902?

A. No sir, I have not, I don't go back of 1903.

Q. Where are these statistics kept?

A. Those figures were compiled in Mr. Mahoney's office. He has a record of the business that moves from these points to and through the Mississippi River.

Q. Have you had occasion to reduce it to car loads?

A. No sir, I have not.

Q. On what basis would you reduce that to car loads, packing house products and dressed meats?

A. Well, our figures as furnished to me by our auditor show the loading of fresh meat that we handled for the fiscal year ending June 30th, 1905, it shows that we averaged 12.3 tons to the car for fresh meat. On packing house products 16.2. Taking those fig-

160 ures as a guide I would feel warranted in dividing this tonnage by those figures per car to get the result.

Q. Now I was careless enough not to notice the date that those figures covered for the averages on your road in the car load.

A. The fiscal year ending June 30th, 1905.

Q. Do you know whether that was greater or less than the general average or have you any reason to suppose that it is greater or less?

A. Well, I think heretofore we have considered the fresh meat shipments to be about 11 tons to the car, that is my recollection, and the packing house products about 15.

Q. The loading during that year happened to be heavier than it was the year previous?

A. It seems to have been.

Q. Do you know any reason for that?

A. I do not unless it was the possibility of the shortage of cars requiring them to be loaded heavier. That is one method of making up for a shortage of equipment.

Q. Does that have that effect in the business?

A. I think it has, yes sir.

Q. Now, you stated in your testimony that you had taken the average of the loading of cattle per car load and that showed 23,000 pounds per 36 foot car. Possibly you said 23,000 and a fraction. Was that estimate made by taking the total tonnage and dividing it by the total number of car loads?

161 A. For the year 1905 we handled 791,981 tons of cattle and they were loaded in 68,738 cars.

Q. What year was that?

A. 1905. The average is 11½ tons, using those as factors.

Q. Now, if you do estimate on the basis that the compensation was always paid up to the minimum, it would make the amount of cattle paid on in the car load, somewhat greater than those figures would show?

A. I don't quite catch that.

Q. Well, there were some cars in that 700,000 tons, there were some cars that would load less than 22,000?

A. In all probability because this represents tonnage on which we collected the charges.

Q. So it did not embrace then the actual rate but it embraced the tonnage on which the freight was paid?

A. Well, that was the minimum, 22,000 for a 36 foot car. That is what we charged for whether there is that weight in the car or not, and therefore in computing the weight of 22,000 pounds, that is the minimum even in case the actual weight was any greater.

Q. Now have you in your mind, or any figures before you which will show what percentage of the total output of the packing houses on the Missouri River is shipped east bound through the Mississippi River gateway and what percentage is disposed of otherwise?

A. I could not answer that question.

162 Q. Do you know of any records to which resort can be had to show the total receipts of the railways at the Missouri River for packing house products and dressed meat?

A. That is what the railroads have received from the packing houses there?

Q. Per annum?

A. The only way you could get at that would be to get it from each individual road.

Q. How much did your road receive at the Missouri River, at the different points and what proportion thereof did you carry through the Mississippi River gateway?

A. I think I have some figures on that but I am not quite sure. You asked me a while ago if I had any information as to the number of cars we handled, or was that question as to the number of cars handled by all the roads?

Q. Well, I had both in my mind.

A. I have the number of cars that we handled but I have not the number of cars for others. For example, out at Kansas City for the year ending June 30th, 1904-1905, we handled 446 cars of packing house products and fresh meats destined to the south. We had 8311 destined to the east. Now then, as far as the cars—so far as we were concerned, these would pass through the Mississippi River because that is our route to the south, that would be through the St. Louis gateway and so would also these 8311 cars so far as our railroad is concerned, there is 12,757 cars of packing house products and

163 fresh meats from Kansas City which we handled through the Mississippi River gateways.

Q. What was the total number received by you at the Missouri River or at Kansas City?

A. At Kansas City that was 9916 cars for that year

Q. Over 90 per cent. of it so far as you are concerned passed through the Mississippi River gate way, that you received in Kansas City?

A. Practically that.

Q. Now, at Omaha, from which place you have a line reaching to the Pacific Coast, can you give us the figures there, the proportion of the total receipts that passed through the Mississippi River gateway and what proportion did not?

A. I cannot divide that so well at Omaha as I could at Kansas City because from Omaha to the south and southeast we have two outlets; one through the St. Louis gateway and the other through Kansas City. We had out of Omaha for the last year, that is the fiscal year ending June 30th, 1905, 3783 of packing house products and fresh meat to the south. Probably 85 per cent. of that passed through the Mississippi River gateway. In the case of Kansas City the only outlet we would have would be through the Mississipi River crossing but at Omaha we have got two.

Q. What were your total receipts at Omaha?

A. 9621 cars.

164 Q. What amount of that went west on the B. & M. line?

A. 1960.

Q. So there would be something like 80 per cent. of your total output that would move probably through the Mississippi gateways?

A. Yes sir.

Q. And 20 per cent. for the other points?

A. Yes sir.

Q. Now, is it a fact or not that a large amount of dressed meat and packing house products which goes to towns in Minnesota would move from Missouri River points rather than from Chicago?

A. Well, there is quite a movement from Missouri River towns, but I don't know to what extent the Missouri River towns supply that trade.

Q. Does your road haul any packing house product and dressed meat to St. Paul from Chicago?

A. Yes sir. From Kansas City we do, Kansas City and St. Joseph.

Q. You don't haul any from Chicago to St. Paul?

A. Well, I could not answer that question, I don't know.

Q. Considering that the rate of freight from Chicago to St. Paul is 27 cents and 20 cents from the Missouri River points, it would naturally move from the Missouri River to St. Paul instead of from Chicago?

A. Well, I would naturally say that it would, yes. There

165 might be some special conditions though that would change that.

Q. Now, Mr. Crosby, would any one be able to determine to what extent the market conditions, the conditions of the crops and the feeding for the production of meats and the condition of the ranges

and the relative rate adjustment, would any person be able to determine to what extent either one of those factors would affect the direction of the traffic and its movement?

A. Well, I think they would all have more or less effect on it.

Q. How can any one—can any one determine to what extent a particular factor would affect it, could he?

A. Well, one particular factor that would affect the price I think, without any question is that if there were more cattle offered for sale than anybody wanted, I think it would have a very material effect on the price.

Q. You did not quite understand my question. Here are a number of markets on the Missouri River to which live stock moves from various points and likewise to Chicago and St. Paul. Now it has a tendency to move to one market or the other and would any one be able to tell to what extent the various factors I have mentioned would create that tendency of the movement in one direction or the other?

A. Well, I think they all have some relation to each other.

Q. The rate which the packers can receive on the products which they ship out from the Missouri River would affect their
166 ability to supply the markets in the east as compared to their supplying them from Chicago, just in proportion to the freight rate, would it not, Mr. Crosby?

A. Well, I don't know about that. If Chicago drew all of its supplies from the same territory that Missouri River did I think that that would put a different construction on things, but Chicago does not depend on the Trans-Missouri territory for its supply wholly. It is only one of the factors.

Q. The lower the rate of freight, the greater the opportunity to supply a given market to which that rate applies, would not that be the case?

A. Well, the lower the freight rate the less the cost, there is no question about that. If you could get a rate from the Missouri River that was better in proportion to anything that they had in Chicago, it would undoubtedly have its influence as to where they would ship their stock.

Q. In determining whether or not the cost could be more perfectly—well, we will take this for an example. In determining whether or not hogs might be more profitably shipped to Chicago and slaughtered, we will say from Fort Dodge, Iowa, or shipped to a Missouri River market, where the product would finally be sold at Cincinnati, that would depend on the total cost of the transportation, from where the stock was fattened, to the one market
167 or the other, wouldn't it?

A. I don't know. I don't think when a man buys a hog in Chicago or at the Missouri River he knows whether he is going to ship it to Cincinnati or New York or any other place. Take any place at all, I don't think the packer when he buys a hog knows what he is going to do with the product and he don't figure on what the market is.

Q. If he can ship it five cents a hundred pounds cheaper from the

Missouri River than the hog man can ship his hogs, the tendency would be to direct the traffic to the Missouri River in the live stock and the product out, would it not?

A. I don't know that that would follow, no.

Q. Do you know any place in the country where the packing house product and the dressed meat rate is lower than the live stock rate, except the adjustment between Missouri River points and Chicago and St. Paul and Chicago?

A. Right off hand I don't recollect. I thought I had some figures here that indicated that but I don't know that I can find it, no sir.

Q. Is it not a fact that the published rates from Missouri River to Chicago, up to the year 1902, for many years, did not show a lower rate on the packing house products and dressed meat than on the live stock?

A. The local rate you mean?

Q. Well, these rates that are complained of here, yes, the local rate?

168 A. I have not got those figures fixed in my mind. I would not like to say either yes or no for that reason. I have not charged my mind with it at all.

Q. The tariffs on file with the Commission would be the best evidence?

A. Certainly, they speak for themselves.

Q. What does it cost to haul a car load of cattle from the Missouri River to Chicago?

A. Well, I cannot answer that question, I don't know. It depends entirely upon the conditions and the circumstances under which it is transported.

Q. What does it cost to haul a car load of fresh meat or packing house product?

A. It is the same proposition exactly. It is all owing to the conditions and the circumstances under which it is transported as to what the cost is.

The COURT:

Q. Is there any way of getting at that approximately?

A. Not till after the transaction is over with. If you hitch on to a car at the Missouri River, or a train of cars and pull them to Chicago, you could tell what it cost to do that.

Q. Well, judging from your records and from what you know about it in the past, can you answer the question?

A. I could not off hand answer it because the conditions that prevail today may not prevail tomorrow.

Q. What has it cost?

169 A. I could not answer that question.

Q. Can you hunt it up and find it out?

A. I don't know whether we have records that show that or not. If we have, I take it the information will be given.

Q. How do you get your basis for making charges if you don't know what it costs?

A. We assessed our charges based on what competition would

permit us to get. We could not make our charges on the basis of what it cost.

Q. That is you charge all the traffic will stand, is that the idea?

A. Well, we charge what we can get.

Q. That is the same thing.

A. Considering the circumstances. The competition fixes it. We cannot make our rates independent of other people; they fix the rates for us.

Mr. COWAN:

Q. Mr. Crosby, I will ask you if it is not a fact that traffic men generally hold to the opinion that they can not determine what it costs to move a given car load or train load of a given commodity?

A. Yes, you can not tell.

Q. You answered in the affirmative, did you, to that question?

A. Yes.

Q. And that grows out of the fact that no two different trains or two cars are handled in precisely the same way or under the same circumstances, does it not?

A. We had a train the other day of freight that went into
170 the ditch and wrecked about fifteen car loads of freight. It cost us probably over $15,000 or will before we get through with it. We do not know when that is going to occur again. It may never occur again but that is an element of cost that we do not know anything about.

Q. Taking the total operating expenses and dividing that by the total train mileage comes as nearly furnishing you with the average of what it costs per train mile as any other way you can get at it?

A. That is what it has cost, yes.

Q. You cannot tell for certain that that is going to be the rule for the future?

A. No, sir, we cannot tell, the volume of traffic would have an effect upon it and what it cost depends on that as well as on the other expenses actually laid out.

Q. The increase in the volume of traffic, that is to say the density of it, the number of car miles per mile of road, or number of car loads per mile of road, the tonnage or train loads per mile are all facts which affect the cost per unit, that is per car or per train in the transportation service, does it not?

A. Yes sir.

Q. As the density of the traffic increases, the expense per unit of that traffic is decreased?

A. It ought to be.

Q. That is assuming that your operating expenses remain
171 the same or on the same ratio?

A. There may be some other expense to take the place of that, an increase in something.

Q. What does it cost your road per train mile on an average for hauling a freight train or all kinds of trains if you estimate it that way?

A. Our annual report, I believe, gives that information. I don't recall what the figures are.

Q. Have you a copy of the annual report?

A. Not here, no sir.

Q. I wish you would kindly furnish those figures from the annual report if you can.

A. That is the cost per train mile?

Q. Instead of doing that I want to read you some figures and ask you to verify them from your annual report in your auditor's office or in your own office and ascertain if they are correctly made out. In the Cattle Raisers' case where the cattle rates from the west were in controversy I made up from the annual reports of the different roads filed with the Inter State Commerce Commission or I had made up by the auditor's office the following statement which I will ask you to verify and I will hand you the brief which contains it.

Average load of cars per train for the year 1898, 16.

For the year 1904, 18.

172 Average number of empty cars per train for the year 1898, 6.

For the year 1904, 7.

Average tons per train mile, for 1898, 104 tons.

For 1904, 284 tons.

Tons per loaded car mile for the year 1898, 10.

For 1904, 15.

Revenue per ton mile for the year 1898, 9.84 mills.

For the year 1904, 8.58 mills.

Percentage of empty cars to the total car mileage for the year 1898, 28.37 per cent.

For the year 1904, 28.54 per cent.

Freight earnings per train mile for the year 1898, 1.60.

For 1904, 2.44.

In cents per car mile, earnings for 1898, 9.64.

For 1904, 12.87.

Now, if you have a copy of my brief in that case, those figures appear in table A 1 in the back of the brief opposite C. B. & Q. Railroad.

A. What is the number of the page?

Q. It is not paged but it is an appendix to the brief and is table A 1. I wish you would kindly look and see if you can verify those figures and of course if you can get at it for any intermediate years you can do that.

A. If I am able to get that information, where do I file it?

Q. What is it?

173 A. If I am able to get that information shall I appear with it in court or file it?

Q. Possibly you may have to return. I don't want to put you to any trouble except to file it as a part of your statement if you verify that information. It was taken by the auditor of the Commission from your annual report and furnished to me in the shape that I put it in there and I suppose it is correct. Is it not a fact, Mr.

Crosby, that the number of car loads in trains carrying both live stock and packing house products has increased in recent years?

A. Well, we have increased the capacity of our power and we are able to handle more business. It has increased for that reason. If we had the same engines now that we had in olden times we would not be able to haul any more than we did then.

Q. Are you able to state whether or not you haul a heavier train, that is to say more loaded cars in trains handling live stock than in a train in which you carry packing house products and dressed meat?

A. That is a question that I think our operating people can better answer than I can. It is a matter I have not charged myself with and I would not ordinarily be charged with it. I get the business. It is their business to get it over the railroads.

Q. By the operating department do you mean the general managers and superintendents of transportation?

A. Yes sir.

174 Q. Was Mr. Delano your general manager at the time this case was up before the Commission?

A. Yes, of the lines east of the Missouri River.

Q. He would know better about the relative cost in the performance of the service than you would?

Mr. SEVERANCE: I object.

Mr. COWAN: He said the operating department could tell better about it.

The COURT: Objection sustained.

Mr. COWAN:

Q. Do you know as a matter of fact whether it costs you more money or less money per car to handle the live stock which you haul from the Missouri River to Chicago, than the packing house product or the dressed meat which you haul from the Missouri River to Chicago?

A. I don't just know exactly what the difference in cost is.

Q. In answer to Judge Baxter's questions you said that you thought it was more profitable at the same rate, as I understood you and I suppose you meant that, to haul packing house products than it was live animals from the Missouri River to Chicago?

A. I told him that I thought we had more money left, if there was any left at all, meaning if there was any left at all, in handling the packing house product and fresh meat than the live stock.

175 The packing house products and fresh meats come to us practically an unknown quantity. We can handle it on schedule trains and we still do the balance of our business without interference, in handling it.

The live stock comes to us as a class that calls for special service. It either moves in large quantities or comes to us in train loads from the range or it is picked up by local trains. The business that comes to us at the Missouri River generally comes to us with the request and the demand in fact, that we make fast time from the Missouri River to Chicago. It necessitates our making time that is faster than our schedule trains make, and we have to perform

special service. In order to give special service either to live stock or anything else, regular business has got to step one side for the track has to be kept clear to give it the right of way.

In addition to this we have to go to the extent of providing facilities not only at the starting point but at intermediate points for looking after the live stock. If anything happens we have got to provide a place to feed and water them and sometimes it is practically impossible to do it.

In the case of handling fresh meat or packing house product all we have got to do is to keep it under ice. If it is under ice, the length of time does not cause any extra shrinkage nor claims
176 for damages which is true in the case of live stock where we have all kinds of claims for shrinkage and loss in value and that makes the business very much more expensive. The 28 hour law also makes an additional expense.

Q. What is that?

A. We have to provide yards especially under the 28 hour law where we can unload the cattle and sometimes the enforcement of the law requires additional facilities where the yards as at present established would not take care of the business. The 28 hour law requires us to stop and feed and water the live stock in transit, after they have been in transit.

Q. For how long?

A. Every 28 hours.

177 Mr. DAWES:

Q. How long?

A. Five hours.

Mr. COWAN: That does not apply to amount to anything to the shipment to points on your line intermediate between Missouri River and Chicago?

A. We have had instances where we had to do it, and have shortened up our time practically to get inside of the 28-hour limit.

Q. Isn't it a fact you carried dressed meat and packing house products at as great a rate of speed as you do live stock?

A. If we did, we wouldn't have had to shorten up the time on live stock from the Missouri River to Chicago.

Q. I mean, if it is not a fact, that the facts require you to go that speed?

A. We have no train from Missouri River to Chicago that handles dressed meat in 28 hours.

Q. On what train do you usually move live stock products?

A. We have a train that handles that business that leaves the Missouri River at one o'clock every day.

Q. One o'clock in the afternoon?

A. Yes, sir.

Q. And according to your schedule what time is that train due in Chicago?

A. I think about six o'clock.

The COURT: The next morning?

A. No, sir, the next afternoon, the next night.

178 Mr. COWAN:

Q. What live stock trains do you run from Western Iowa that makes it in any less time?

A. Our live stock trains from Western Iowa do not get the live stock from Western Iowa in solid trains the same as we do from Missouri River, where it comes to us in train loads, all we have to do is to take hold of it and run it to its destination.

Q. I am not disputing that. I am asking you now what live stock trains you run from Western Iowa points which reach Chicago in any quicker time than the packing house product train that leaves the river there at one o'clock?

A. At the present time our train schedule from Western Iowa is entirely different from the packing house train. We aim to make here in the morning and we make the schedule, I don't know exactly what the time is, because I have not charged myself with it, but we have a schedule from Western Iowa that enables a man there to load today, for example, and make his market day after tomorrow. I do not know the exact hours to get that, but between stations I am inclined to think that that train must necessarily run a good deal faster than our meat trains do.

Q. That is, between stations?

A. Yes, sir.

Q. Between what stations?

A. Between the stations where they take the live stock up.

179 Q. But after you have got a train load of the live stock?

A. Well, you may be half or three quarters of the way over the railroad before you have got a train load of it.

Q. Well, in actual practice does it happen that way, Mr. Crosby?

A. Well, I don't know. These stations sometimes get one car, sometimes two, sometimes three, or four or five.

Q. Isn't it a fact that you generally fill out a train in a division?

A. Our operating people can answer that better than I can, because they come right in contact with it.

Q. Isn't it a fact that some year and a half or two years ago there was an extension of the time in the schedules of live stock trains reaching Chicago from Iowa points at six o'clock, so that they were required to load earlier in the day in order to make the following day's market in Chicago, than they formerly did?

A. I believe there was some change in the schedule because they found they were running the trains too fast, they could not undertake to do it, but just what it was, I do not know.

Q. What is the rate of speed at which you reach this market from Missouri River on the average, taking your live stock trains?

A. Well, with a live stock train from Missouri River to Chicago now, we try to make it within, and succeed in making it

180 within the twenty eight hours. If we do not have to stop for anything you can figure what the average is. It would be a little more than 18 miles an hour.

Q. You expect to run twenty miles an hour exclusive of the time at division points changing engines?

A. We expect to make it within that time, make every endeavor to do so.

Q. Isn't that just about 18 to 20 miles an hour for your trains that haul fresh meats and packing house products?

A. No, it is not, because on fresh meats and packing house products to Chicago it does not make so much difference.

Q. You say you leave at one o'clock in the afternoon and get there at six o'clock the second evening. That would make 29 hours instead of 28?

A. About 29 hours, but 28 hours to Chicago, Mr. Cowan, as you know, means a good deal less than 28 hours local schedule. We have got to stick on an hour or two to make delivery here in Chicago.

Q. I know that.

A. We do not have to calculate that in making the run on the product.

Mr. DAWES: Finish your answer.

The COURT: Finish your answer.

Mr. DAWES: Say what actual time you average, or what difference that would make?

181 A. The idea I intended to convey in handling live stock here inside of 28 hours is you would have to make better time than 28 hours because you have to calculate for two hours' time in Chicago, so our running time is less than 28 hours.

Q. Say 26. What about packing house products?

A. In packing house products we make 29 hours or even 30 hours. We do not have to make that for a market. If we do not get it in here until 10 o'clock at night instead of six o'clock, there is no shrinkage, no bill to pay, because they missed the market and haven't disposed of it to the best advantage, and so forth, and expect the railroad company to pay the bill.

Mr. COWAN:

Q. You have got to be prompt with fresh meat, haven't you?

A. But there is not the consequent shrinkage and claims for damages in case we are not. We want to be on time with our dead freight, for that matter.

Q. I wish you would give us a statement to be made, or make it up yourself which you can verify and file to show how much damages you have paid on fresh meat and packing house products covering the year 1905 ending June 30th, shipped from Missouri River points to Chicago, with the total number of cars, and how much damages you paid on live stock shipments from Mis-
182 souri River points east thereof for damages which occurred this side of the Missouri River, and the number of cars.

Mr. DAWES: Is that very important? That is a very difficult undertaking, together with the other little items of information you have asked for.

Mr. COWAN: It is of this importance, Mr. Dawes, that it was claimed on the hearing before the Commission by the representa-

tives of several roads which extend west of the Missouri River that there was substantially no difference in the amount of damage claims paid on one or the other, so far as applies to shipments beyond the Missouri River.

Mr. DAWES: We are trying this case now. If it was claimed here it might become pertinent, but these things which you casually ask for, and in a spirit of all courtesy we desire to furnish you, require a great deal of time and a great deal of money to supply, the time of a great many clerks. If this is very important we will give it to you but there has nothing developed, it seems to me, to require it.

Mr. COWAN: There is nothing of sufficient importance to cause me to give you any trouble. Perhaps Mr. Crosby can answer now.

183 Q. Mr. Crosby, are you prepared to say it is a fact that it costs you more money per car load if averaged by the car loads of live stock for damage claims occurring this side of the Missouri River than it does per car load on the dressed meat and packing house products shipped from the Missouri River to Chicago—are you prepared to testify that it costs more money for damage claims one way than the other?

A. More money in dollars and cents, do you mean?

Q. No, per car?

A. Well, your live stock business is ten times the amount of the other, and if I paid an equal amount of course your packing house product would be entirely out of proportion to the live stock. If I paid a dollar a car on the fresh meat and packing house products, that would only be $9,000, but if I paid a dollar a car on live stock I would be paying thirty or forty or fifty, it don't seem to me that that would give any idea of what you are trying to get at. I could not answer that question because I would have to charge my mind with the amount of money we have paid out, and I do not know.

Q. You are not able to say whether it costs more per car for one than the other as estimated by the car load?

A. No, sir.

Q. Now, with respect to the matter of the terminal charges and the expense of handling dressed meats and packing house products,

184 is it not a fact that it costs you more on the average per car for your dressed meats and packing house products for your terminal and switching charges than it does on your live stock net?

A. Where?

Q. At the terminal switching charges at Missouri River for receiving and delivering at Chicago?

A. Now, you take the Missouri River, for example, at Kansas City, the packing houses are located on the tracks of connecting railroads, other railroads, that are in competition with us for the carrying of that product, and we have to pay their switching charges, and in the case of South Omaha and St. Joseph the packing houses are located on the tracks of railroads operating in the stock yards.

Q. Well, in the case of Nebraska City, that is something that you have to pay?

A. But we have to pay it, competition forces us to pay them.

Q. Whatever it is that forces you to pay it, you have to pay it?

A. Yes, sir, that is a result of competition.

Q. When you come into Chicago how much do you pay in the way of switching charges on the packing house products which you deliver to the Union Stock Yards?

A. I have forgotten exactly what the figure is; I would not venture to say.

Q. It was stated by Mr. Miller before the Interstate Commerce Commission as $2.50?

A. I don't believe the figure has changed any since then.

185 Q. In the case of live stock, you collect back $2. of what you have to pay out?

A. Yes, sir.

Q. In the case of packing house products and dressed meats you pay one cent per mile on the cars moved both ways, do you not?

A. Well, if it is a private car we do. It is not all moved in private cars.

Q. You pay that to the packers, to their car lines, do you not?

A. We pay, where a private car is used, we pay one cent per mile, yes, sir.

Q. Now, in the case of the live stock you pay six mills per mile for the car used?

A. I don't know whether the rate for private cars is six mills. It is on a mileage basis, yes sir.

Q. A mileage basis of six mills. So that the difference you pay for the use of a private car line, the difference would be four dollars per car on the basis of a thousand miles movement from the Missouri River here and return, that would be a thousand miles, it would be six dollars for the live stock car and ten dollars for the packing house products car?

A. Yes, sir.

Q. Since 1901 and 1902 there has been a very substantial increase in the amount of shipments of dressed meats and packing house products eastward from the Missouri, has there not?

A. I believe there has been some increase, the same as there

186 has been increases in live stock. Now, for example, from Omaha in 1902 there was practically ten thousand cars of packing house products shipped. In 1904-5 there is 9600.

Q. Have you got the 1901 there?

A. No, sir, I have not.

The COURT: Just repeat that again.

A. For 1902 and 3 there was practically ten thousand cars shipped; for 1904 and 5, that is the fiscal year of that, 9600. That shows the decrease for this year as compared with it three years ago.

The COURT: That is the way I understood it?

A. Yes, sir.

Mr. COWAN:

Q. How is it as compared with 1901?

A. I haven't got the 1901 figures, Mr. Cowan.

Q. Those figures can all be obtained from Mr. Mahoney, can they not?

A. Yes, sir.

Q. I will not trouble you with it, then. Has there been any increase in shipments of live stock, that is, cattle and hogs from points in Iowa which take the 23½ cent rate and which is scaled down coming eastward to Chicago?

A. I have no figures on that and therefore I am not prepared to answer the question. There is no use of making a guess at it; I don't know whether there has or not.

187 Q. In speaking of export by way of the Gulf, you had reference practically to packing house products and not dressed meats, did *not* not, Mr. Crosby?

A. Yes, sir.

Q. The dressed meat, because of the heat in the Gulf and the unpreparedness of the boats is not so much exported from the Gulf ports?

A. No, I don't think there is any fresh meat.

Q. That is practically all exported through the Atlantic seaboard points?

A. Yes, sir.

Q. What is included in the term "packing house products"?

Q. Box and loose meat, lard, tallow, hides, stearine, oleomargerine, canned meats, bacon, sides and all that.

Mr. COWAN: And the packing house products exported through the Gulf ports is comparatively a very small per cent. of the total, is it not?

A. I think it is. I have never seen any figures on it.

Q. Have you examined the Government reports with respect to it recently?

A. No, sir, I have not.

Q. It appears from an exhibit on file here that it is for the year ending June 30th, 1900, it is one-half of one per cent. exported through New Orleans and Galveston?

A. That is changed, I think, since then considerably.

Q. Are there a greater number of buyers of cattle and hogs which are shipped out of the market at Chicago than there are at Kansas City or Omaha and St. Louis?

188 A. I don't know, Mr. Cowan, I should say in a general way it is true that there is a greater number here, because it is a greater market. There is room for more people, more to be done, consequently more people to do it.

Q. This is a more desirable market from the standpoint of having the wider opportunities in competition and selling than either one of the other markets, is it not?

A. I should imagine it was, yes, sir.

Q. Do you know what per cent. of live stock sold in Chicago market in shipped out?

A. Shipped out, no, sir.

Q. When hogs are sold at Kansas City to be shipped to Cedar Rapids or to points where there are packing house, Ottumwa, perhaps and some others, do they move on a local rate from Kansas City to those points?

A. I do not know that there is anything of that kind done. There is no other way of providing a rate for it than the local rates.

Q. It is a fact, is it not, that feeders when they are bought on the market at Missouri River are shipped out to the feed lots at 75 per cent. of the local beef actual rates?

A. Well, they have two propositions on that. They are shipped out at 75 per cent. of the fat cattle rate, and sometimes they preserve their identity in the billing and take the through rate, to
189 the feeding point.

Q. To the feeding point?

A. Yes, sir.

Q. Is it not a fact that when cattle are shipped from the range country or other points west of the Missouri River through Missouri River, that they are nearly always billed to Chicago from the point of shipment?

A. Yes, sir.

Q. If they are sold at Missouri River the rate paid will be the local rate from point of shipment to the Missouri River?

A. Our rule is if the party wants to try the benefit of the Missouri River market, the Missouri River market is an intermediate point with us, if he thinks he has any idea of going from Chicago with the stuff, to consign to Chicago to start with.

Q. Yes.

A. Then he gets the benefit of the through rate in case he decides to go through.

Q. Suppose it don't go through, but he sells it to somebody who does ship through, do they always get the benefit of the through rate?

A. Well, the transaction so far as the railroad knowledge goes probably does not show any change in ownership, we don't know anything about it.

Q. Well, from a practical standpoint, is it not true that live stock originating west of the River, when it does move on to Chi-
190 cago, moves on a balance of the through rate?

A. Yes, sir, practically so.

Q. Is there any live stock shipped which is re-billed out of the Missouri River to Chicago on the local 23½ cent rate, or the proportional 20 cent rate?

A. Well, there is live stock that moves at the 20 cent rate.

Q. Yes, but is it re-billed on that proportional rate?

A. Yes, sir.

Q. What would be the use of that?

A. Well, there is some live stock originates in some territory where there are no through rates in connection with certain lines via. Kansas City.

Q. That would be a very considerable amount, would it not?

A. Well, I don't know. We are a pretty fair feeder of the Kansas City live stock market and we have no through rates west of the Missouri River via Kansas City to Chicago.

Q. Do you not make through rates in connection with other lines via Kansas City?

A. No, sir.

Q. If I should ship from the Indian Territory, from points on—say Vinita on the M. K. & T.?

A. We have through rates, but I mean our own territory. When I say "our own" I mean the territory the Burlington Road itself serves beyond the Missouri River. We do not publish through rates from that territory by way of Kansas City.

Q. For the reason that would be a very long distance to
191 come around?

A. Yes, sir.

Q. Now, if you shipped down to Kansas City from Denver, say, and the party wanted to ship on to Chicago, would you allow him the Denver to Chicago rate?

A. Via Kansas City?

Q. Yes.

A. I don't think we would get his business Denver to Kansas City, but if we did we would have to put ourselves on a parity with the other roads.

Q. Yes. And that would be to allow the same rate allowed over your road by way of Omaha?

A. Yes, competition would fix it for us.

Q. Are you able to testify that you shipped any live stock at all which is billed on a proportional rate, or the local rate from either Omaha, St. Joseph or Kansas City, to Chicago where it originates west of the Missouri River?

A. Well, there is live stock hauled from Kansas City at the 20 cent rate that originates west of the Missouri River. Via Omaha the entire territory is covered by the system of through rates. There is no proportional rate from Omaha.

Q. The proportional rate is only published in Kansas City?

A. Yes, sir, that is all, and St. Joseph.

Q. Do you say that live stock is shipped on the 20 cent rate from Kansas City?

A. Yes, sir.

Q. But my question was, whether they are rebilled on the
192 proportional rate?

A. The 20 cent rate is the proportional rate as published by us.

Q. That was the balance of the through rate of 20 cents, would be a 20 cent rate. Well, do you ship any on that basis from Kansas City? Are you able to testify that you know that you ship a single car?

A. Well, from my personal knowledge, I have seen billing for cars hauled at 20 cents originating west of there from Missouri River to Chicago, yes.

Q. Well, it is a very small amount of the shipments, is it not?

A. Well, I don't imagine it is any very great per cent.

Q. Isn't it a fact that taking from all the Texas, Indian Territory, Oklahoma Territory and East of New Mexico, that the balance of the rate from Kansas City on to Chicago is on the basis of 16¼ cents?

A. Somewhere in that neighborhood.

Q. There would be no motive on the part of the shipper to pay twenty cents?

A. Not on that basis.

Q. Take Colorado common points territory, and stations in Colorado east thereof, is that not on the basis of 16 cents?

A. It is my recollection the difference in the rate is 16 cents.

Q. With the exception of some stations in Nebraska from which it may move by way of points on the River north of Omaha
193 do you know of any stations where the 20 cent rate applies as the balance of the rate to Chicago over Kansas City?

A. Why, the rate from Hastings, the balance of the rate, is 20 cents, and from Grand Island the balance of it is twenty cents.

Q. I am saying except from places in Nebraska, take the country south of the Nebraska line?

A. Do I know of any points in Kansas for example that the proportion east is 20 cents?

Q. Yes, take New Mexico, Indian Territory, and so forth?

A. I am not familiar with those rates to know what the balances are. I haven't paid any attention to it for years.

Q. The reason I am asking about it is I am in a general way familiar with those tariffs, as you know and I have known no such rate anywhere in the country?

A. I have been, but I am a little bit dull on it now. I could not answer that question.

Q. Now, there is another proportional rate that is shown up in the publication here on live stock originating at Missouri River and destined to points east of the Indiana—Illinois state line. Do you know of any such shipment being made by way of Chicago?

A. Yes, very frequently—not frequently—Eastern packers will go to Missouri River and buy certain classes of hogs and
194 certain classes of cattle that are shipped East sometimes for export where the rates are based on the Missouri River.

Q. But that is live stock that is going to points east of Chicago?

A. Yes, sir.

Q. And that is the proportion of the rates which the road west of Chicago gets out of the total charges?

A. That is the proportion they accept, yes, sir.

Q. Now, are there any through rates on live stock to points east of the Indiana-Illinois state line from the Missouri River?

A. None except the combination. There is no through rates published beyond the Mississippi River or Chicago.

Q. And the rate is made by combination?

A. Combination of the rate either from the Mississippi River or Chicago, whichever would make the less rate.

Q. They are based on Mississippi River or Chicago?

A. Yes, sir.

Q. Whichever would be the cheapest?

A. Yes, sir.

Q. Now, isn't it a fact that in shipment of packing house products and dressed meats from points like Cedar Rapids and other interior packing towns in Iowa, to points in Ohio, Indiana or any other Eastern point that the rate would be made up of the proportional rate from that point to the Mississippi River and the rate
195 from the Mississippi River to the destination?

A. It may be or it may be made on Chicago. I am rather inclined to think that the combination is on Chicago at present.

Q. Well, if it is, it would be because it is as little or less?

A. It is practically to equalize through either gateway, equalize to the Mississippi River or from here.

Q. Do you recall now what the proportional rate is from Cedar Rapids, for example, for shipment to a place like Cincinnati or Indianapolis from the Mississippi River crossing?

A. I do not; the C. B. & Q. is not a Cedar Rapids line.

Q. The Mississippi River basis is five cents a hundred pounds higher than Chicago, is it not?

A. I think that is correct. It is 116 per cent., as I recollect it, Chicago is 100 per cent., represents 100 and Mississippi River is 116.

Q. Now, the proportional rate on dressed meat and packing house products of 18½ cents Missouri River to Chicago, is the rate on which most of the shipments is made, is it not?

A. Either that or 13½ cents to the Mississippi River.

Q. Yes, and that would amount to the same thing if the
196 difference is five cents?

A. Yes, sir, the same thing.

Q. Mr. Crosby, from your examination of the subject and your knowledge of it, what proportion of the shipments of dressed meats and packing house products which you carry from the Missouri River through the Mississippi River gateway are on the basis of the twenty cent rate to Chicago, and what proportion on the basis of the 18½ cent rate or the 13 cents to the Mississippi River?

A. I could not answer that question on anything like an intelligent figure; it is something I never thought about, never took any interest in, never cared to ascertain.

Q. You are satisfied that very much the larger proportion moves on the lower rate?

A. Yes, sir, there is no question about that.

Q. Do you know whether the packing house products and dressed meats put up on the Missouri River are consumed to any considerable extent in the City of Chicago, or does that stuff which comes here go on and finally reach eastern destinations?

A. Oh well, the Cudahy people, for example, have several plants here in Chicago, at which they handle their Missouri River products and I do not think there is a packer that has a house at the Missouri River but what disposes of more or less of his product through
197 retail or wholesale houses that he has here in Chicago. They ship certain classes of meat from Missouri River to their market to be disposed of here.

Q. Well, is that not manipulated somewhat like the live stock business is on the Missouri River, and that they ship out so as to get the benefit of the 18½ cent rate?

A. No, sir.

Q. A great number of those cars go east after unloading them?

A. If they do they pay the twenty cent rate to Chicago. We have nothing to do with that. There is no proposition of that character, milling in transit in packing house products here in Chicago.

Q. To what point do you actually haul cars of packing house products and dressed meats when you come to Chicago with it, passing through Chicago?

A. The bulk of this stuff that moves to the Atlantic seaboard moves through outside junctions; for example, if we have meat that is destined East in connection with the three I road, we make delivery to them at Zearing, Illinois. That is the first station west of Mendota. If it moves in conjunction with the Chicago Junction Railway we bring it to West Grossdale. The through consigned packing house product and dressed meats generally take some outer belt line instead of passing through Chicago.

Q. And that takes a basis of 18½ cent rate to Chicago?

198 A. Yes, sir.

Q. There is no through rate from the Missouri River to the Atlantic seaboard on dressed meats and packing house products?

A. No, the rate is made up by the combination on the Mississippi River rate.

Q. In the same manner as the live stock rate is made up as explained?

A. Yes, sir, in fact we publish no through rates from Missouri River on anything to the Atlantic seaboard.

Q. It is all based on combinations?

A. It is all based on combinations either through the Mississippi River gateway or Chicago.

199 Q. What is the rate on dressed meat and packing house products, Chicago to New York?

A. I have got them right here. Packing house products Chicago to New York is thirty cents, fresh meat forty-five.

Q. What is it on live cattle?

A. 28 cents from Chicago to New York on live cattle.

Q. What is it respectively to Buffalo and Pittsburg from Chicago?

A. I haven't got those figures.

Q. Seventeen cents on the live stock, isn't it?

A. I don't know. I am not prepared to say.

Q. It appears in the record here that the rate on live stock from the vicinity of St. Paul to Chicago is 27 cents a hundred, which makes it twenty-five on live cattle, a distance of 400 miles. You have testified in answer to Judge Baxter that the live stock rates in question were reasonable. Do you claim that that is a reasonable rate, Mr. Crosby, considering the density of traffic and the number of roads?

A. Yes, sir.

Q. Do you know what it costs to haul a carload or a trainload from St. Paul to Chicago?

A. No, sir.

Q. Do you know how much profit there would be in hauling a car load or a train load from St. Paul to Chicago?

A. I couldn't tell if I didn't know what it cost to haul it.

Q. In your opinion as a traffic man ought the rates on dressed meat to be lower than the rates on live stock, which come in
200 competition with that dressed meat?

A. I think the dressed meat rate and the packing house rate ought to be advanced, and should be higher than it is.

Q. My question was do you think, is it your opinion as a traffic man that the rates of freight on dressed meat and packing house product ought to be less than on the livestock which comes in competition with that dressed meat or packing house product?

A. Well, that would depend upon the conditions surrounding the transportation of the commodities.

Q. Well, what facts in your mind would justify a lower rate on the packing house product and dressed meat than on the live stock coming in competition with such product?

A. Competition might force it down so that you couldn't get any more—couldn't get as much.

Q. What competition?

A. Competition between carriers for example.

Q. Ought competition to force it down so that it would be cheaper on the dressed meat and packing house product than on the live stock which comes in competition with it?

A. Well, that is a matter of opinion.

Q. That is what I am asking you for, your opinion?

A. I don't think competition ought to go so far as that.

Q. What is that?

A. I don't think competition should be so severe as that.

Q. In your opinion ought the rates of freight on dressed
201 meat and packing house products be less than on the live stock?

The COURT: Leaving out the question of competition.

Mr. COWAN: I am just leaving it to his opinion. Ought it to be so?

The COURT: He said that would be a matter of competition.

The WITNESS: I answered that question I thought.

Mr. COWAN: He said competition would do it, but I am asking him whether it ought to be so or not.

The COURT: I think he has answered that, that it ought not to be. Now, you are asking the question, leaving out competition, as to what it ought to be. Let him answer it that way.

Mr. COWAN: If the Court please, there must be some way of determining what is a just and proper rate.

The COURT: Well, I am asking him that. Answer that, leaving out the question of competition.

A. That is a question surrounding the transportation of the two commodities, or the three?

Mr. COWAN:

Q. What are the other conditions, besides competition?

A. My idea is that the rate on packing house products such as

fresh beef, ought to be higher than it is to-day between the Missouri River and Chicago, but we can't get any more, and we can't help ourselves.

Q. What about the disparity of rates, leaving out competition?

A. That is one of the conditions under which live stock
202 itself is transported. There might be conditions warranting both having the same rate, or one having a higher rate than the other.

Q. In 1901 the Interstate Commerce Commission held that the rates ought not to be higher on live stock than on the product and the railroads complied with that order and established that basis of rates, which continued in force substantially for many years—continued in force in fact until the change was made that is complained of here. Is it your opinion that that adjustment of rates as it existed at that time is right or not?

A. Well, under the conditions existing at that time we accepted that ruling, or rather adjusted our rates in accordance with that.

Q. And that was according to your judgment?

A. Well, their ideas were followed out. I don't know whether that adjustment was a rate made in consequence of that decision or not. I don't remember when the rates were adjusted on that basis, as a matter of fact.

Q. But you do know that for many years they were the same?

A. Yes.

Q. And the railroads voluntarily published and put in force those rates?

A. Yes, sir.

Q. Now, is it not a fact, Mr. Crosby, that during a portion of that time, beginning back a few years ago, and extending a few years previous to the date of the Great Western contract,
203 which was in 1902, that some of the roads were in the habit of shipping the packing house products and dressed meat on a rebated rate below the published rate?

A. I believe there is some evidence to that effect that has been introduced before the commission, but I want to say that at that particular time I had nothing personally to do with the business east of the Missouri River. I was in charge of the railroad west of the Missouri River, and had nothing to do with the packing house or other products moving east of the Missouri River to Chicago. I was not acquainted with what was going on in that section at all.

Q. With the exception of the fact of the existence of rebates, if it be a fact, and with the exception of the Great Western contract, what factor has made a change in the conditions as they existed previous to that time and as they existed in August, 1902, when these lower rates were put into effect?

A. Well, there is the existence of this Great Western contract.

Q. I say, what other factor besides that, any other one?

A. That brought these rates down to where they are?

Q. Yes; any other competition except that?

A. Well, that was what established this basis of rates today; it

was a matter of competition between the Great Western and all these other routes that stepped in and made this contract.

204 Q. And when you state that you have been unable to get more on account of competition, you mean the competition established by that contract?

A. Yes.

Q. What is the rate to St. Paul generally on classed goods, and commodities, to the Missouri River from Chicago?

A. The first class rate for example between Chicago and St. Paul is sixty cents, but for manufactured merchandise between Chicago and the Missouri River it is 80. There is no fixed relation between the two.

Q. Is it not true that as a general thing the railroads endeavor to adjust them on the basis of St. Paul taking eighty per cent. of the Missouri River rate?

A. No, sir; I don't think so.

Q. How is that?

A. I don't think so, no sir. The St. Paul rates are fixed largely by Lake competition from the east and Chicago.

Q. Isn't it a fact that they are based on about that difference?

A. About eighty per cent. of the Missouri River rate would make their rate 64. Their rate is sixty, I think.

Q. Do you know of any instance in which the St. Paul-Chicago rate is higher than the Missouri River rate, except this rate on hogs and cattle?

A. You mean Chicago to St. Paul *versus* Chicago to Missouri River.

Q. Or St. Paul to Chicago?

A. I don't recall anything; the scale of rates is less.

205 Q. Mr. Crosby, you estimated a loss of revenue of $190,000 or something like that. Was that it?

A. Yes, $196,000.

Q. Upon what do you base your idea that there would be a loss in revenue if you reduced the live stock rate from Western Iowa?

A. It would reduce the rate and would not stimulate the business. There wouldn't be anything to make up the difference. We wouldn't have any increased business; they wouldn't raise any more cattle or hogs or sheep in western Iowa nor would they ship any more to the market, so there wouldn't be anything to take the place of it.

Q. Would they ship any more to Chicago?

A. I don't think they would ship any more or any less.

Q. Is it your opinion then that it would affect the receipts of the St. Paul market if that relation were disturbed, as claimed by Mr. Mills and the Missouri commission?

A. There are certain sections of Iowa that are tributary to St. Paul and Chicago, and if a change was made in the rate from that territory to Chicago undoubtedly a similar demand would be made for a change of rates to St. Paul and Minneapolis. There is a good deal of jealousy between these various markets. All they ask for is fair treatment, but they want the best one.

Q. Isn't it a fact that you assume that you would be losing

revenue to the extent of $196,000 because you assume it
206 would not change the amount of traffic on either of the roads?

A. For example the rate was in effect to-day and there was no change made in the rate to other points, other markets, if there was no increase in the business the loss in revenue would be whatever was taken off the freight rate.

Q. But suppose you increased your shipments to Chicago on a twenty cent. rate, whereas the other would be on a twelve cent rate to Omaha, wouldn't that more than compensate for the difference in the rate in the actual receipts of your company?

A. If the result of that was to divert a percentage of the business to Chicago that otherwise would not go there, it might possibly result in that condition of affairs.

Q. Then I say your figures were based on the assumption that it would not increase the amount of traffic, but would result likewise in the reduction of the rates to those other points?

A. I think it would have that result, and we would be out money on all of them.

Q. Do you know of any other factor which justifies the difference between live stock rates and packing house and dressed meat rates, except the competition existing, as you call it, by reason of the Great Western contract?

A. Do I know of any other factor that makes a difference in the rate?

Q. No, that justifies a difference or the difference between
207 the live stock rates and the packing house product and dressed meat rate, except that difference brought about by the Great Western contract?

A. As I said, I think that under the present adjustment of rates we can handle meats and packing house products and have more money left, if there is any left, than we can live stock. A change in the rates, it seems to me would not change that condition any.

The COURT: If it was right a few years ago to have them alike, what is the reason for the change?

A. This element of competition.

Q. What other elements? Is there anything else besides competition?

A. Nothing else except that possibly we can handle this,—you might say dead perishable freight to a little better advantage, or at a less figure than live perishable freight.

Q. Can you do that now any better than you could three or four years ago?

A. I don't think we can. I have shown by the way that the fresh meat and packing house product loads more to the car than live stock, so that it means more revenue per car.

Mr. COWAN:

Q. Now, you speak of a sixteen cent rate on wheat. Did you ship any wheat from Omaha on which you received sixteen cents?

A. No, I hardly think there is any local wheat shipped from

Omaha. I don't think there is any raised there. I never saw any wheat from there.

208 Q. What do you mean when you say the rate is sixteen cents from the Missouri River on wheat?

A. I mean that is the local rate.

Q. That local rate is simply the basing rate, not used in actual shipments?

A. It is from some Missouri River points.

Q. Where?

A. Plattsmouth is a Missouri River point; farmers bring it in from the country and they ship it from there.

Q. Where is that?

A. Plattsmouth; that is on the Missouri River.

Q. I thought it had been very well determined that the Missouri River basis of rates on wheat had been ultimately established as a proportional rate of seven cents on the Missouri River plus 12.5 on Chicago, making twelve cents to Chicago?

A. No, the difference is only three. What is understood to be the normal proportional rate on grain from the Missouri River or Mississippi River to Chicago is nine cents to the Mississippi River and twelve cents to Chicago.

Q. Making three cents difference?

A. Yes, but you take the twelve cent rate on 60,000 pounds and it makes the rate on a car $72.

Q. To haul that car they have to haul a considerably heavier load than in the case of packing house products or dressed meat, don't they?

A. The contents of the car weigh more, but we haul it a good deal slower, consequently as we run faster with the more perish-

209 able freight we can't hold the gross tonnage.

Q. Now, Mr. Crosby, suppose that you were shipping and you wanted to ascertain the shipments through some division point, what your trains were composed of, the make-up of your trains, how would you go about that? How would you find it out?

A. That is, what the consist of the trains were?

Q. Any train on your road coming out of Omaha?

A. I would go to the Superintendent of transportation and ask him what he was handling out of there on a certain train.

Q. At what time do you carry the most livestock,—in what month do you carry the most livestock through to Chicago?

A. I couldn't answer that question off-hand, but I can get the information.

Q. What division point have you this side of the Missouri River, the first one this side of Pacific Junction?

A. We have one at Creston, we have one at Ottumwa, Burlington, Galesburg and Aurora.

Q. Well, where do your trains from Kansas City, Omaha, St. Joseph and Leavenworth all come together?

A. Galesburg.

Q. Not before they reach Galesburg?

A. No, sir.

Q. I wish you would have made up, Mr. Crosby, and furnish it to us, a statement of the actual train consist showing dressed meat and packing house product and the number of live stock cars in each train and the total number of loaded and empty cars in each train passing through the first division point this side of Pacific
210 Junction, for fifteen days in two different months of the year. You can select the months now.

A. Well, the packing house product, fresh meat and live stock; that is, in trains containing shipments of packing house product, fresh meat and live stock you want to know what other freight was in those trains, if any.

Q. I want the consist of all of the trains for fifteen days, and the only cars I care to have designated as to what product is in those, is the packing house product, dressed meat and live stock.

A. Passing Creston. That is the first station east of Pacific Junction.

Q. Would that be representative of the shipments coming out of the Missouri River?

A. It would from Omaha, but it wouldn't from the southwestern Missouri River at all.

Q. What place would be representative of Kansas City?

A. Probably the most representative junction point you could have to cover Kansas City and St. Joseph would be Brookfield, Mo.

Q. All right, give us those.

A. I suggest that the two be separate, because the consist of the trains will be different.

Q. Well, now, does Burlington catch both of the s-ipments?

A. No, sir; Burlington is on the Mississippi River; it would catch the business that crosses the State of Iowa only.

Q. Well, you had better take Burlington then as being
211 more representative?

A. Instead of Creston.

Q. Instead of Creston, is that the one you mentioned?

A. Yes.

Q. Now, what months will you select, Mr. Crosby?

A. I don't think it makes very much difference from our standpoint. Any month that would suit you would suit us.

Q. Suppose you take April and October. We have similar statements made up for other cases covering April and October, on other products. Take the first fifteen days in April and the first fifteen days in October of the year 1904.

Cross-examination by Mr. SCHAEFER:

Q. Mr. Crosby, you named a number of carriers that compete in the transportation of products from Kansas City, St. Joseph, Omaha, Sioux City and St. Paul to Chicago. Don't those same carriers compete in the transportation of live stock?

A. No, sir. The Wabash Road for example would compete with us for packing house product from Omaha to Chicago, but I don't believe they would undertake to do it with live stock. They might try it but I don't believe the shippers would stand for it.

Q. All these roads transport live stock, do they not, from Missouri River points and St. Paul to Chicago?

A. Why, you take it from Minneapolis and St. Paul they don't compete for live stock.

212 Q. Why not?

A. Their route is too long. They could compete, themselves and their connections, for the product.

Q. They compete on the product but not on the live stock?

A. Yes, sir.

Q. Wouldn't their length of route deprive them of the product as well as the livestock

A. They go the same route, but there is a difference between live perishable freight and dead perishable freight. A railroad may be able to compete for the dead perishable freight, but would be unable to do so in the live perishable freight.

Q. That is one of the roads that competes on the product?

A. Yes, sir.

Q. How about the balance of them

A. Well, you take the Missouri Pacific road for example out of Atchison, or even take the St. Joe & Grand Island out of St. Joe in connection with the Chicago & Alton railroad, they could compete with us and do compete with us for the products of the packing houses at St. Joe, but they don't for the live stock.

Q. None of these roads compete for the live stock with each other?

A. That is, all these routes that can get them, and the longer routes that are all under one set of rails, you might say, would not ordinarily——

Q. These different routes do transport live stock, you say, from Missouri River points to St. Paul and Chicago?

A. No, sir; I say they don't. I say they compete for the product but not for the live stock.

213 Q. Didn't you say the local rates on the live stock were the product of competition?

A. Yes, sir; I mean to say the adjustment of the live stock rates as they stand to-day is the result of competition.

Q. And by competition you mean that those carriers also compete for the transportation of the product?

A. Yes.

Q. The proportional rates, Mr. Crosby, are much lower than the local rates, are they not?

A. Yes, sir.

Q. For example the local rates on cattle from Kansas City, St. Joseph and Omaha to Chicago are 23½ cents and the proportional rate 18½ cents, five cents lower? Do these lower proportionals pay anything in excess of the cost of transportation?

A. I think they do. A proportional rate, you understand, is a division of a rate. The party or shipper who has live stock originating west of there gets that as a proportion of a rate.

The COURT: That only applies to stock that originates west?

A. Yes, sir.

Mr. SCHAEFER:

Q. But these proportionals are five cents less than the locals and pay something in excess of the cost of transportation, so the locals must pay very much more, do they not, in excess of the cost?

A. Well, if the rate is higher it pays more, but one is a pick-up proposition and the other is a through consignment.

214 Q. Are not through rates over through lines composed of several carriers as a rule much lower than the sum of the locals?

Mr. DAWES: I object to that.

The WITNESS: What is the question?

(Question read.)

Mr. DAWES: I think he should confine himself to this particular subject we have under inquiry here, and not question him as to a habit of some of the railroads.

The COURT: I think I will sustain the objection.

Mr. SCHAEFFER: Mr. Baxter asked the question if the through rates were not lower than the sum of the locals, intending to prove thereby that these through rates were reasonable. I ask if it is not a rule to make through rates lower than the sum of the locals?

The COURT: He has answered that. The only question is whether there are a number of other companies, other carriers included.

Mr. SCHAEFFER: Where there is a through line, each line has its local; but my object is to prove that they make the through rate less than the sum of the locals, hence the fact that the through rate is less than the sum of the locals is no evidence that it is unreasonable.

The COURT: I don't think that makes any difference.

Mr. SCHAEFFER:

Q. Are not through rates over a line composed of several carriers, which are less than the sum of the local, considered a commercial necessity?

215 A. Well, the fact of their being composed of several carriers does not alter the situation. You take the general adjustment of rates between the Mississippi River and Chicago, and the territory west of the Mississippi River, the through rates are the combination of locals on the Mississippi River as a rule, whether the lines are composed of half a dozen railroads or whether it is one or two or three.

Q. Where it is not more than one road there could be no combination of locals?

A. Well, there can. We have a rate from Chicago to Hastings, Nebraska, for example, direct, over our own rails. If the rates on merchandise from Chicago to Hastings——

Q. It is on the same system?

A. Yes.

Q. Now, the rate from the Mississippi River to New York, where the line is composed of several different roads, each having their locals, wouldn't a rate made up of the sum of those locals be prohibitory in the movement of the traffic?

A. I don't know that it would necessarily be prohibitory, but it would be a good deal higher than for example the Pennsylvania, which has its own rails from St. Louis to New York.

Q. Wouldn't it be an excessive rate?

A. Not necessarily. It might be and might not.

Recross-examination by Mr. COWAN:

Q. In Exhibit No. 3 you specify what the rates are on
216 tropical fruits to Chicago from Kansas City. Is there any fruit hauled of that sort from Kansas City to Chicago?

A. Well, the rate is the same on strawberries, for example, that class of fruit. We have hauled that.

Q. Has there ever been a time when the packing house rate was based on strawberries, or vice versa?

A. No, there are a great many rates based on the packing house rate, or the beef rate.

Q. There never has been any relation existing between live stock and fruit?

A. The information was what we got for transporting other classes of freight.

Q. You have told what you got. Now, my question is whether that means anything after you have told it.

The COURT: That is a matter of argument, isn't it?

Mr. COWAN: I don't know, if I find out whether these rates, in the custom of railroads, one is based upon the other, I think it is material to show they are entirely foreign.

Q. Is it not a fact that the rate on fruit and live stock are entirely foreign to each other, and that neither is ever based upon the other?

A. Certainly.

Q. Now, in scrap iron it is the same thing?

A. Yes.

Q. And old rags?

A. The question that that is an answer to is simply a reference to the revenue we receive for hauling other commodities as compared with what we receive for hauling live stock.

Q. Isn't it a fact you can go through a tariff sheet and
217 make up innumerable statements that will show all sorts of differences?

A. I could take almost any commodity and I think we get more money for it than for handling live stock.

Q. And then you could take a great many other commodities and show you get more for handling live stock than the other commodities?

A. There wouldn't be a great many, no. That could be shown in some instances, but not in a great many.

Q. Now, we will take shipments of tropical fruit from California. How much do you get on a carload for your proportion from the Missouri River to Chicago?

A. On a car load of oranges we get about 18¾ cents a hundred.

Q. From the Missouri River to Chicago?
A. Yes, sir.
Q. And what do they load?
A. Oh, they load 26,000 pounds to the car.
Q. Yes?
A. My recollection is it is 24,000 pounds, or may be 26,000; I don't know, but it is more than the rate on live stock.
Q. Is it not a fact that tropical fruit is shipped on a basis of practically a dollar per car mile from Los Angeles to Chicago?
A. Well, I don't know. I never understood that any computation was made that way. It may be that the distance would approximate that.
Q. I don't mean a dollar per car mile. I mean ten cents per car mile. It figures out exactly that way from the Missouri River?
A. Well, it simply happens to be a coincidence.
218 Q. You have named a number of articles here. Are you able to say that the rate on live stock is in no case based upon the relation of the live stock shipment, or the rate, to these articles you have mentioned in your Exhibit No. 3, except packing house products and dressed meat?
A. Well, that statement is made there, Mr. Cowan, in line with the proposition that live stock does not pay its fair proportion of the cost of transportation as compared with other commodities, and we give that information to show what we earn on other commodities that we handle.
Q. What are your average earnings per ton mile on all commodities, including live stock?
A. I have forgotten the figure. It is eight cents and a fraction.
Q. Eight cents and some odd mills; eight and a fraction per ton mile?
A. Per ton per mile. That is so much per ton for each mile.
Q. Is it not a fact that these live stock rates pay considerably more than the average rate per ton mile on your system?
A. In some instance they do, and in other instances they do not.
Q. It is easy to figure out from any place; take the distance and rate and how much it would be per ton mile for minimum weight?
A. Yes, that is a simple matter.
Q. Isn't it a fact that on the average earnings per loaded car mile on your system it would prove out less than the earnings
219 per car mile on the live stock under the rates in question?
A. I don't know whether it will or not.
Q. Now, when you give the figure that cattle pay less than they ought, less than their proportion, what do you mean by that? Less than what the average freight pays?
A. I think in view of the risk attendant in the handling of that business it ought to pay more than the average rate. It is a special insurance, a special risk. You can't go anywhere and get insurance for special risks at the ordinary rate of insurance. We are insurers of this live stock.
Q. Do you think it ought to pay any more than the average earnings per ton per car mile, including the local freight?
A. Including what?

Q. The local, less than car load rate?

A. Do you mean that live stock should pay a rate equivalent not only to other carload freight, but also the less than carload, is that what you mean?

Q. Yes, that is the way you ascertain the average car mile?

A. It includes everything we carry, the high as well as the low. As I remarked before, it seems to me that live stock is the most expensive proposition we have to handle. We have to give it special service, it is perishable, and it seems to me it ought to stand more in proporition than the general average of our business.

Q. Including your local freight?

A. Yes, sir.

The COURT: Now, what other point do you give to sustain the fact. You furnish passes to men in transporting them?

220 A. Yes, sir.

Q. What else?

A. We carry less weight per car than we can on almost any other commodity; we have to hurry them through.

Q. There is more danger from wreckage?

A. Yes, more danger from wrecks, we have to run faster, and if we are delayed with them we have got to provide means to feed and water them, and we have got to give them special attention in every respect that we don't have to give to anything else, and transportation for the employés in charge, and we have to build special pens for unloading and taking care of them.

Mr. SEVERANCE: You have to spray them?

A. In the case of hogs we have to water them in transit.

The COURT: Just make a little statement of those things and bring it in in the morning, embodying all those points.

Mr. COWAN:

Q. Mr. Crosby, one other question: Are rates of freight and relative rates of freight based on the cost of carriage, or are they based upon various factors and circumstances including cost of carriage as one of them?

A. The cost of carrying is a consideration. Of course we cannot tell until after we have carried it how much it costs, and if we find out we attempt to haul it for too little we couldn't collect anything more.

Q. And the rate or the schedule of rates is adjusted on the basis of comparative cost of carriage between the one article and the other?

221 A. No, sir.

Examination by Mr. DAWES:

Q. Do you know any reason why packing house products, or products of beef and the live animals should be carried at the same rate?

A. No, sir.

Q. Is there any relation between the two articles such as to make it either necessary or desirable so to do—necessary so to do?

A. I don't think so.

Q. Is there any more intimate relation between the products of animals and the animals themselves than there is between lumber and furniture?

A. Well, one is the manufactured article; it is the raw material in both cases, that is about all the difference there is.

Q. Lumber competes with furniture in this market, does it, in a remote way?

A. Yes, sir.

Q. Then except by the mere assertion, and the acquiesence of the railroads in that assertion, there is no reason why the packing house product and the live animals should be carried at the same rate?

A. No, sir.

Q. The methods of hauling and all these elements that enter into the transportation question differ in the two?

A. Yes, sir.

222 Examination by Mr. SEVERANCE:

Q. Mr. Dawes has inquired with reference to furniture and lumber on the one hand and packing house products and live stock on the other. Now, in the case of furniture and lumber, the manufactured product is much more bulky than the raw material?

A. Yes, sir.

Q. In the case of packing house products the reverse is true?

A. Yes, sir.

Q. And live stock take up a great deal more space in proportion to the weight than the packing house product or the fresh meat?

A. Yes, sir.

Q. Now, take flour and grain. Which is the most bulky?

A. The flour. You cannot load your cars as heavy.

Q. And as a matter of fact nearly every manufactured product is more bulky than the raw material from which it is made, except packing house products, isn't that so?

A. As it flashes through my mind, I would say yes.

Q. Now, take structural iron.

The COURT: Which has the higher rate, flour or grain?

A. They take the same rate.

Mr. SEVERANCE:

Q. Now, you speak of having to pay a switching charge at Kansas City and St. Joe on cattle?

A. We pay none at Kansas City.

Q. None at Kansas City?

A. No, sir.

Q. But you do at the St. Joseph yard?

A. Yes, sir.

223 Q. Now, the fact is that the situation of the River roads at these different Missouri River points is different as to each road?

A. Yes, sir.

Q. One road has to pay a switching charge and the other hasn't, at one place, and the reverse may be true at another place?
A. Yes, sir.
Q. But at the points you are competitive you have to make the same rate?
A. Yes, sir.
Q. So the fact that you have to pay a switching charge at St. Joseph and another road does not is your misfortune, and you cannot take that into account in making your rate, is that true?
A. That is true. At Kansas City we go to the stock yards with our own trains and don't have to pay anything, but we don't get to the packing houses with our own engines.
The COURT: Why is it that in the past the finished product of meat costs as much to carry or more than the live stock?
A. Conditions were such that they could get it.
Q. There has been a time when it has been considerable more?
A. Yes, sir.

Mr. DAWES:

Q. Isn't it a fact that flour from Minneapolis and St. Paul to Chicago takes more than grain?

A. The flour local rate to Chicago I think is just the same
224 as on wheat, but the flour that moves east is all handled on through rates.

Mr. SEVERANCE: Practically all the flour is handled on the export rate, Atlantic seaboard rate?
A. Yes, sir.

Mr. SEVERANCE: I would like to examine the witness a little further when he brings in that list that your Honor asked him about, in the morning.
The COURT: If no one has any other questions to ask we will adjourn until tomorrow morning, and I think we will meet in this case in Judge Kohlsaat's room in the south wing.

An adjournment was thereupon taken until the following day, September 19th, 1905.

225 SEPTEMBER 19TH, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Present same as before.

Whereupon GEORGE H. CROSBY, resumed the stand for examination by Mr. Dawes:

Q. Mr. Crosby, at the request of the court made yesterday, he requested that you formulate the particular reasons why it costs more to handle live stock than it does packing house products or other similar freight. If you have done so, will you be kind enough to give the reasons in detail, and file for the benefit of his Honor a detailed statement.
A. First, yards have to be built at shipping points in order to pen and load the live stock.

Q. How considerable an item of expense is that?

A. That is a very great item of expense. I think our people estimate that the yards on the Burlington Lines cost something like a million dollars and that it cost in the neighborhood of $100,000 a year to maintain them. We also pass an attendant in charge of the live stock, something that is done with no other class of traffic that is handled.

226 Q. A pass for how many cars?

A. Two cars or over in the case of cattle and hogs.

Q. Have you any general notion how much in fare that would figure up for the year, or did figure up for the last year?

A. No, I don't believe I could give you a fair idea of it.

Q. Well, it would figure up into twenty thousands or thirty thousands of dollars, wouldn't it?

A. Yes, it would figure up into the hundreds. A return pass is given to the attendant and we have to provide a different caboose to attach to the stock train or trains handling stock.

Q. Pardon me. That return pass is given on what kind of trains?

A. Passenger trains.

Q. So that the equivalent of a first class fare from Chicago or from the terminal point to the place of shipment or origin is given to each shipper for every two cars of stock that he ships?

A. Well, the rule is one man with two cars and two men with five cars or over and so forth. That transportation is given on first class trains, to return. A specially equipped caboose is used attached to these trains for the convenience and comfort of the attendants in charge of the live stock. Some of them are equipped with bunks.

Q. And other conveniences?

A. And other conveniences.

Q. Toilet rooms, toilet appliances?

227 A. Yes. That class of car is not used on the ordinary freight train.

Q. Would such a caboose as that be required at the end of an ordinary freight train, or is it so used?

A. No sir.

Q. Where live stock is in transit——

A. Where live stock is in transit 28 hours it is necessary to provide special feeding and resting yards for the cattle.

Q. Are those in addition to the yards which you spoke of the first time?

A. Yes, and they are more extensive and larger yards.

Q. How many of those have the Burlington on its road, if you know?

A. Let's see, we have eight, as I recollect them.

Q. How extensive are those yards? Mr. Crosby?

A. They will hold from fifty to one hundred and fifty cars of live stock.

Q. Sheep or cattle?

A. Sheep, cattle and hogs.

Q. How many attendants, if you know are required for those yards?

A. We keep a corps of attendants there, whatever is necessary to handle the business that is offered or is brought there at different seasons of the year. For example, when the range cattle are moving we require more attendants than we do on the ordinary run of live stock.

228 Q. Well, water has to be provided, has it not?

A. Yes, water and feeding facilities.

Q. Water is a costly commodity, is it not, for this purpose?

A. Yes sir.

Q. And we have to make contracts to pay for the water or sink our own well, do we not?

A. Or sink our own well, yes sir.

The COURT:

Q. Have you any estimate of that additional cost in figures?

A. No sir, I have not.

Q. There should be some way of getting at it, I should think.

Mr. DAWES: That is — a matter, of course, in the auditor's office and I have not had the schedule prepared, but I would like to produce that, your Honor, and have it verified.

The COURT: In doing that, get what it costs to ship the products to market so that I may have the comparison. Give the court some data on which it can arrive at a conclusion.

Mr. DAWES: This is for the purpose of showing, without regard to the actual cost of the transportation, the difference in the items of cost. These are additional items of cost necessitated in the handling of live stock as distinguished from the cost of handling the product. Now, proceed, Mr. Crosby.

A. In the matter of the hogs, during the hot weather, we
229 have to wet them down at convenient points, run them under the water tanks and wet them down with a hose and water from the tanks. In handling live stock we are expected and in fact required to make better time in transit than with ordinary freight. In consequence we cannot get the maximum use of our power as faster speed means less tonnage.

Q. And additional expense?

A. And additional expense. Where, for any reason, we fail to make the market, we are confronted with claims for damages which are generally settled.

Q. What do you mean by making the market?

A. Arriving in time. If, for example, we bring live stock into Chicago today, we are expected to have it in the market not later than eight o'clock. If we get it in at 10 or 11 or 12, or 2 o'clock we are generally confronted with a claim for shrinkage on account of the extra time in transit and the probable difference in the market.

Q. If the market has fallen the next day, we are required to pay the difference?

A. Yes, we are required to pay the difference and the same thing

is true in case of rough handling in transit of live stock. They claim that rough handling will cause shrinkage. If for any cause there is a delay or anything unusual happens, something that the railroad cannot prevent or cannot foresee, if in the mind of the shipper his live stock is damaged, we are expected to pay for
230 it. The same thing is true in case of animals that injure each other. If a car load of cattle which are loaded at a given point, arrive at destination with one down or crippled, with a broken leg or possibly dead, a claim is presented to the railroad.

Q. In reference to those claims that you speak of, are those claims adjusted and paid as a matter of fact?

A. Yes. All claims that are presented are not paid. Any more than is the case with any other claim presented on another class of freight.

Q. Well, are there a considerable amount of these claims of such a nature that we are compelled to meet them and pay them?

A. Yes sir.

The COURT:

Q. Don't you have such claims on dressed meat?

A. No, sir, the dressed meat is not sold on a market, for example, it is not necessary to get it in between certain hours.

Q. Don't you have claims for damages on dressed meat and packing house products?

A. Not in the ordinary course of transportation, no sir.

Mr. DAWES:

Q. Well, why, Mr. Crosby, if you will explain to his Honor.

A. Well, it is perishable freight, but as I attempted to explain yesterday there is dead perishable and live perishable freight.
231 In the case of the live freight there are damages, either real or imagined, by shrinkage and so forth. In the case of the dressed meats, undoubtedly if there was an unusual delay to the contents of the cars and the cars were not properly protected by icing and so forth, there might be some damage.

Q. But the only damage aside from the failure to properly refrigerate the car, would arise in the case of wrecks to the dead freight?

A. Yes sir.

Q. But there are many other causes of damage which occur frequently in the ordinary handling of a train of live freight?

A. Yes sir.

Q. Other than wrecks?

A. Yes sir.

The COURT:

Q. Isn't it true that this dead freight as you call it, that they make claims for damages in reference to that for not getting through on time and in making the market and all that? Isn't it true that the railroad companies do that, pay such claims and have been paying them?

A. We have had claims for unusual delays of freight, other perish-

able property than live stock where we have failed through our own neglect to properly protect the property.

Mr. DAWES:

Q. It is true, is it not, Mr. Crosby, that what we are calling "dead freight" packing house products, etc. is not shipped to a definite, particular market?

A. No sir, it is not.

232 Q. But that all live stock is?

A. Yes sir.

Q. In other words, there is no claim asserted against this meat product for mere delay unless the delay has caused a damage to the property; that is true, is it not?

A. That is it exactly. We are not required in bringing in packing house products and fresh meat, to get it here between the hours of 5 o'clock in the morning and 10 o'clock in the morning. In the case of live stock if we get it in at 10 o'clock and the shipper's commission man tells the shipper if he had been in at eight he could have done better with it, sold it for five or ten or fifteen cents more a hundred pounds, he promptly puts in a claim to the railroad for that difference. That would not occur with the fresh meat.

The COURT:

Q. Do you claim that those packers have not presented claims against your railroad or other roads?

A. Those claims are not paid as a rule unless I know of it.

Mr. DAWES:

Q. Have you met with any claims from packers in the handling of this freight, the product of live stock, except claims for such delays as has resulted in specific damage to the property transported?

A. No sir, we have not. We would not entertain a claim of that character.

Stopping to feed and water and rest means the loss of the
233 use of our equipment for a period of from five to twelve hours. The cars that are taken into these points have to remain there, or, if taken away, other cars must be brought in to take their place. This means an extra expense. There is no other class of freight we handle that it is necessary to unload in transit. It is not necessary or incidental to business of handling any other commodities that we should load and unload them in transit.

Live stock trains are given preference over all other freight trains, and that means an extra expense. When we take a long train of live stock at a speed of 20 or 25 miles an hour, everything else has to stand to one side and that means delay, which means extra expense in handling that train as well as additional expense to those trains set aside. Then again there is a possibility of injury to the attendants while in charge of the live stock.

Q. In every case the freight which we are talking about is accompanied by an attendant. Now, is there any other class of freight which we transport which is accompanied by an attendant?

A. No sir.

Q. At our expense?

A. No sir. Then again there is the possibility of injuries to attendants in riding on these freight trains. They are not equipped,—they are not handled as a passenger train is.

234 Again, the live stock interests, in order to handle those shipments properly have to have a special class of equipment. It is a special car built to handle live stock. If there was not any live stock shipments made at all we would not have to have this class of car at all that we use for that purpose.

The COURT: What kind of a car would you use, a cheaper car?

A. No, we would have a box car or other class of equipment that we have to take care of our other business outside of live stock.

Q. It has to be a special car for dressed meats, does it not?

A. Yes sir, but we can handle any other perishable freight in that same car or we can use that car for merchandise.

Mr. DAWES:

Q. Why can't you handle other freight generally in live stock cars?

A. Well, stock cars have to be open for ventilation and that would necessitate the shipments being exposed to the weather and to theft. Stock cars have to be bedded before they can be shipped to load and that is an expense on the carrier and then after they are shipped, after they have been used they have to be cleaned again and re-bedded for for another use.

235 There are various regulations issued by the United States Government from time to time by the Bureau of Agriculture, requiring cars to be disinfected. That means additional expense.

At various seasons of the year cattle are moved from quarantine sections where they are. Special yards have to be provided to take care of those cattle; they can not be mixed with the others.

Q. That is a matter of law, isn't it, government regulation?

A. Yes sir. Then there are attendants in charge of the live stock in transit. Their welfare has to be looked after in the matter of meals at various points and times. In fact, as a rule we carry stockmen from our depot to an eating house, by a conveyance of some kind in order to have them get something to eat quickly.

The COURT:

Q. You mean at stations along your road?

A. Yes sir. Then at our yard limits, we stop the train at extreme distances, we provide conveyances to take them from where the train stops to some other section of the yard rather than have them cross the tracks.

Then again, when stock gets down in the cars as frequently happens, trains have to be stopped and that means the delay of the entire train. Then again the stock may be down in such shape where the train or the car has to be switched to some stock chute to unload and get them in the car properly.

236 Mr. DAWES:

Q. Is it a common occurrence for stock to get down in the cars?

A. That occurs more or less and that is one idea in having the attendant in charge. The stock shipper thinks that he ought to have somebody there in his interests to look after the live stock. That means a delay, of course, and a delay means expense.

Q. In such cases as that do the train employés assist?

A. Oh, yes.

Q. So we are not relieved of the necessity of caring for those cattle ourselves?

A. No sir.

Q. Now, Mr. Crosby, these conditions which you have enumerated, are they all substantial matters or are they simply——

A. I think every item that I have enumerated there is a substantial matter; it is a matter of fact, it is not a theory.

Q. And a matter which involves us in largely additional cost in the operation of this particular kind of traffic?

A. I think so. It is not true of any other class of traffic that we handle. If we take a car load of fresh meat from one end of the road to the other, there is nothing to get down in it or to get hurt or nothing to happen to it.

Q. Will you be kind enough to file that memorandum and mark it?

(The paper referred to is marked Crosby Exhibit A, September 19th.)

236½ CROSBY EXHIBIT A.

SEPT. 19, 1905.

What the carrier does and is expected to do in the matter of handling live stock, that is not required or expected in the handling of other traffic:

1. Yards must be built at shipping point so that shipper can pen and load hi*d* stock.

2. Attendant is passed in charge to look after the stock.

3. Return pass is given to starting point.

4. Specially equipped caboose car is attached to train for convenience and comfort of attendants, generally provided with sleeping bunks.

5. Where stock is in transit, or liable to be twenty-eight hours or longer, feed yards have to be provided for feeding, watering and resting.

6. In the case of hogs, they are wet down with water at convenient points in transit during hot or warm weather.

7. The carrier is expected, in fact required, to make better time in transit than with ordinary freight, in consequence cannot get maximum use of its power, as faster speed means less tonnage.

8. In case of failure to market, claims for damage are made.

9. In case of delay from any cause, or rough handling, claims for shrinkage are made.

10. If animals injure each other, get crippled or killed in transit, claims are made.

11. Stopping to feed, water and rest, means loss of use of cars and engines for period of five to twelve hours. Means cars have to remain at feeding point, or if moved away, other cars have to be provided which means extra expense not incurred with any other class of freight.

12. Live stock trains are given preference over other freight trains, which means other business is put to one side and entails expense.

13. Injuries to attendants.

14. Requires special class of equipment.

237 Examination by Mr. SEVERANCE:

Q. Mr. Crosby, in hauling dressed meat and packing house products, you have to haul the car, of course, as well as the contents?

A. Yes sir.

Q. And that is also true in transporting live stock?

A. Yes sir.

Q. Now, you receive no pay for that haul with the exception of the freight on the contents of those cars?

A. That is true.

Q. Is it not true that the proportion of pay freight that you get for the weight for hauling this car, to the contents, on live stock is less than the proportion of pay freight on a car of dressed meats or packing house products and its contents?

A. Well, I think it is according to the record we have of the loading of those cars.

Q. That is a fact, isn't it, that you haul more weight with your engines in proportion to the weight upon which you receive compensation in the case of the live stock than you do in the case of packing house products?

A. Well, I don't know that I exactly understand that.

Q. Don't I make my question clear?

A. No.

The COURT:

Q. It takes more loads of live stock than it does of dead freight?

Mr. SEVERANCE: That is my point. That is when you get
238 it together the weight of the car and the weight of the contents, that the weight of the car bears a larger proportion to the total weight in the one case than in the other?

A. Yes, I think that is true.

Q. And that is an additional reason, is it not, why the rate per hundred weight upon the contents of a car of live stock should be greater than the rate per hundred weight the contents of a refrigerator car or ventilated car carrying packing house products or dressed beef?

A. That is correct, if you want to get more money for the hauling of one car as compared with the other.

Q. Well, in order to get the same rate per ton that is actually hauled?

A. Yes sir.

Q. Because it takes just as much power in the engine?

A. Yes, it takes just as much power to pull a ton of live freight as it does a ton of dead freight.

Q. And vice versa?

A. Yes sir.

Q. Have you got the figures so you can show those proportions?

A. No, I have made no figures on that at all.

Re-examination by Mr. BAXTER:

Q. On cross examination you spoke of a certain proportion of packing house products and fresh meats carried by your line which passed through the Mississippi River gateways, that came to
239 Chicago and certain other proportion that passed through the Mississippi River gateways that did not come to Chicago. Are you able to state what proportion from across the Mississippi comes to Chicago and what proportion goes south to other parts of the country?

A. No sir, I could not answer that question, I have no information on the subject at all, and I have not undertaken to analyze the business so as to know.

Q. I understood you to say that in order to ascertain the cost per freight car mile, you divided the total operating expenses by the total freight car mileage. Did you state that?

A. I don't recollect that question being asked. I gave some testimony where I used that term in the matter of arriving at the average weight of live stock and packing house products but I do not recollect that question in regard to the other.

Q. Well, if the report of your testimony should show that that is so, I will ask you if you would not first divide the operating service between the passenger service and the freight service before you would divide the total operating expenses?

A. That is the method of arriving at those results.

Q. I understood you to say that the actual cost from Texas, Indian Territory, Oklahoma and Colorado and probably some other portions of the western country, as a matter of fact, was only about
240 16½ cents from the Missouri River points to Chicago, is that correct?

A. I think that is the proportion, about that figure.

Q. Does that correctly describe the territory from which that rate obtains; Texas, Indian Territory, Oklahoma and Colorado?

A. There are some other sections of the country, Colorado, Wyoming and western Kansas and Nebraska where the balance of the rate would figure. It would vary very much, there is no fixed balance of the rate.

Q. It is about 16½?

A. Some where in that neighborhood.

Q. I want to know what proportion of the total shipments from

the Missouri River to Chicago pay only about 16½, I mean shipments of live stock?

A. I could not tell you that without looking up the origin of all the live stock we have handled.

Q. Could you approximate it?

A. I could not, no sir.

Q. In your cross examination you were asked to show the consists of certain trains for a certain period or number of days in certain months. I wish in the same statement that you would show the percentage that the gross tonnage of the train containing live stock, what the percentage was of the tonnage to the locomotive hauling said train and the percentage of the cars of freight, what that was of the locomotives hauling those trains. I will give you this
241 memorandum.

Mr. SEVERANCE: You were interrogated yesterday at some length with reference to the balance of the rate, the proportional rate and all that. I will ask you this question: What would be the result if the rates in western Iowa were placed at the same figure as the proportional from the Missouri River to Chicago? What would be the result as to traffic we will say at an equal distance the other side of the Missouri River?

A. That would mean a reduction in the rate from the Iowa point. It would make it harder for the western man to compete and he would pay more in proportion than the man in eastern Iowa. It would advance the cost of transportation to him as compared with his competitor and as you get further west that cost would enhance and the result would be finally that you would eat up his product in order to get it to the market.

Q. Now, the farmer in western Iowa within a distance say of 150 miles of the Missouri River is a competitor in the market with the farmer living the same distance west of the Missouri River, isn't he?

A. Yes, sir.

Q. And the railroads take that into account and substantially equalize the rates, do they not, from this whole section?

A. They attempt to make a fair adjustment so that the
242 western man can live in competition with his eastern neighbor.

Q. But if the rate, the proportional rate which has been spoken of as 16½ cents (it is immaterial what it is, but considerably less than the local rate) should be put in force from this Iowa shipping point to Chicago, it would work a great discrimination against the farmer living a few miles further west, the other side of the Missouri River who was a competitor in the same market?

A. I think it would.

Q. And under ordinary conditions, practically put him out of business if he had no market but the Chicago market?

A. Yes, he would probably feel that he could not compete.

Q. Those farmers in Iowa are given access to the Omaha market on substantially the same terms as the farmers who are located the same distance away on the other side of Omaha, are they not?

A. Practically, very near alike. There may be some difference.

Q. And that same rule would be applicable at other Missouri River points, would it not?

A. Yes, sir.

Q. And the same results would f-low if the change was made as I suggest?

A. I think it would naturally follow.

Recross-examiantion by Mr. COWAN:

Q. Name some cattle shipping point on your line this
243 *this* side of the Missouri River from which you ship live stock to the Missouri River and also to Chicago, that is the 23½ cent belt?

A. I have forgotten just how far east the 23½ cent goes, but, for example, take Red Oak, Iowa.

Q. If a farmer (and everybody seems to be looking out for him) ships his cattle or his hogs from that place into Omaha, can he ship out on the balance of the through rate?

A. No.

Q. Can he ship out on the proportionate of 20 cents?

A. No.

Q. What does he have to pay?

A. He has to pay the local rate.

Q. 23½. If a farmer ships from the same distance, a point west of Omaha into Omaha, can't he ship out on the balance of the through rate?

A. Well, he——

Q. You know whether he can or not.

A. Wait a minute. There is a difference as to what the balance of the through rate is. You take it for our railroad for example, take a man equally distant west of the Missouri River, shipping to Chicago. There is no such thing as the balance of the rate, it is all one railroad and we charge him from his point of shipment to Chicago.

Q. Name a point the same distance west on your railroad, west of Omaha?

A. Well, about an equal distance west of Omaha with Red Oak would be, I think, Lincoln.

244 Q. What is the rate from Lincoln to Chicago?

A. I could not give you that figure off hand.

Q. Well, there is a rate from Lincoln to Chicago, isn't there?

A. There is a rate from Lincoln to Chicago, it is in this file.

Q. There is a rate published from Lincoln to Chicago?

A. Yes, sir.

Q. Now, has not the shipper from Lincoln the privilege of stopping his cattle at Omaha and trying the market and if he don't sell there, of carrying him on to Chicago, if he don't sell there?

A. I explained that all yesterday. The man at Lincoln can consign his live stock to Chicago and feed it at Omaha. He can offer it for sale at South Omaha or not, just as he chooses. If he sells he pays the local rate into Omaha. If he don't sell but concludes to send them on through to Chicago as originally started, he pays

the rate from Lincoln to Chicago just the same as if he had not gone into Omaha or ever dreampt of Omaha.

Q. So that he can ship to Omaha and then ship on at a much less rate than the man this side?

A. Yes, because Omaha is a point intermediate with his destination. In the other case we would be performing a double service, a greater service.

245 Q. Do you perform any greater service to carry in 100 miles into Omaha from the east than you do to carry 100 miles from the west?

A. One is in the direction of the market and the other is where you double on yourself.

Q. But you said you performed a greater service?

A. What?

Q. You said you performed a greater service?

A. We certainly do.

Q. Well, you say it is a greater service and I would like to see where that comes in.

A. If we haul live stock from Red Oak to Omaha, and then from Omaha to Chicago, we double on the line between Red Oak and Chicago.

Q. The total distance hauled then is the distance from Omaha to Chicago plus the distance from Red Oak to Omaha?

A. Yes.

Q. If you take an equally distant point on the other side——

A. In our rate from that point 45 miles west of Omaha, it would be equal to the combination of the rate into Omaha and out again.

Q. Take the rate from Lincoln to Chicago, do you know what it is, do you recollect?

A. If you had that exhibit that I had here yesterday, that shows it. I don't recollect what the figures are, but I will take some other point where I do recollect. The rate from Hastings, Nebraska, is 34½ cents to Chicago on cattle. Now, what do you want to know?

Q. What distance is Hastings?

A. 150 miles from Omaha.

246 Q. What point is 150 miles distant this side of Omaha, name some point there?

A. I have got it right here, I think. Well, Russell, Iowa, for example, or Woodburn, Iowa, is 150 miles from Omaha by our line.

Q. What is the rate into Omaha?

A. 14.58 per hundred.

Q. What is the rate from there to Chicago?

A. I cannot answer that question.

Q. Well, that would make the total cost to him then of about 39 cents if he shipped to Omaha and then shipped on to Chicago?

A. Yes.

Q. And it cost the other man 34½?

A. You have not got your figures right. 37 cents.

Q. Well, a little over 38?

A. 38.08.

Q. It would make a difference of about four cents a hundred.

How long have you been in your present position where you have to do with the lines east of the river?

A. I have been connected with the lines east of the river since the first of December, 1902.

Q. Yesterday evening in asking you the questions relative to the actual cost of the loss and damage per car load, I understood you to say that you were not able to state that it cost any more per car, if you estimate it on the basis of the totalc car load, to pay the loss and damage which you do pay on live stock, than it does to pay the loss and damage which you do pay on the packing house
247 products and dressed meat?

A. I stated that I could not tell you how much it amounted to per car and I did not think that the per car basis was the proper basis as I had already shown that we handled out of Kansas City 9,000 cars of packing house products. Now if I paid $9,000 damage, that would be $1 per car. I handled 60,000 of live stock and if I only paid $9,000 damage it would be only 15 cents per car. In that case the live stock damage would have been 15 cents per car.

Q. Well, whether you think that is proper or not, the court may. Are you able to state now whether it costs you more per car *and* that estimate on the total number of cars of live stock or on the total number of cars of packing house products?

A. I have not attempted to make any figures on it at all.

Q. While you have not made figures, I want you to give from the figures that you have made, if you are able to state, that it does cost any more per car in the one case than in the other.

A. Well, for example, I have testified that I did not know how much we paid for damage on packing house products and fresh meat. I stated on live stock we had paid a certain amount of money and on all other perishable property including fresh meat and packing house products we had paid so much, but as to what proportion of that $13,000 was packing house product and fresh
248 meat, I don't know.

Q. In your statement this morning I understand you to put in as one of the items of extraordinary expense of live stock not incurred in other freight, the loss and damage paid on live stock. I want to see if there is any difference when you estimate it on the basis of the total number of cars of each class of freight.

The COURT: Why, Mr. Cowan, he says he don't know. That is your answer, isn't it?

A. Yes sir.

Mr. COWAN:

Q. What is the rate from some of your principal stations in the Black Hills district, to Omaha?

A. Well, we don't ship cattle out of the Black Hills. The rate from Morcroft, for example, which is just west of the Black Hills country, it is in competition with Bellefouch on the Elkhorn and another station is Gillette, and still another is Sheridan. They run

along all in competition with the Elkhorn road and our rate to Omaha is 36.

Q. What is it from the same station to Chicago?

A. 48.

Q. And that makes the difference between the Omaha revenue and the Chicago revenue of 12 cents per hundred pounds?

A. Yes, I testified yesterday that that was the case.

249 Q. You estimate one of your items of expense to be the expense of hauling the men that travel taking care of the stock, from the station to their meals. That is a new item to me in all of these cases and I would like to know where you do that and how much you ever paid out for that?

A. I think Mr. Rice can tell you more about that than I can.

Q. Well, you are the man that is testifying to it.

A. I know that that exists but just how much money is paid out for that purpose and just where it is done I don't recall.

Q. You say you know it exists. Name then where it exists?

A. We have done it at Lincoln, we have had a man to pilot men through our yards and see that they kept clear of the tracks and so forth; in other words, show them how to get around.

Q. And you paid this man for doing that?

A. The men are in our employ and they are paid.

Q. Just because you happen to show them through the yard?

A. I am perfectly frank to say that it is a cheaper proposition for us to furnish a guide than to pay for a man's leg.

Q. Whose hotel are you showing them to?

A. That is not an instance of taking them to a hotel, but I venture to say that Mr. Rice will be able to give you information to that effect.

250 Q. You have testified a great many times in these live stock cases?

A. Yes sir.

Q. Did you ever mention that as an it-m of expense before?

A. *O* don't think I did. I might not have been aware of the fact, I might have overlooked it, but I know that this transaction at Lincoln has been ther- for years.

Q. Of course that is not involved in the rates in question in this case?

A. No. But that is the only place that you have referree to.

Q. Name some place east of the river where you haul men from the station to their meals*a?*

A. I have stated that I cannot name the place. I understa-d that there are such places, I *i*have been so info-med by people who have those things in charge.

Q. You don't personal-y know that such a thing was ecer done?

A. I have never attended to it personally, no sir.

Q. You have never seen it done personall*t?*

A. No sir.

Q. And you have never audited a bill for it, have you?

A. It would not come under my charge to audit it or approve of

it. I have never appr-ved a coal bill for the railroad, yet I understand that they use coal.

Q. You know they use coal?

A. I don't recollect seeing anybody shovel it into the fire-box.

Q. How many years have you been in the service?

A. I have not made it a practice to ride on the engine,
251 but I understand that they use coal to get them over the road.

Q. You don't r-ally know and you cannot testify that they ever paid a dollar for hauling men to their meals?

The COURT: He has stated that, I think, Mr. Cowan. He only knows by hearsay.

Mr. COWAN:

Q. What were the total nu-ber of carloads handled, of live stock, into Chicago by your system in the year ending June 30th, 1905?

A. I think I have that information here. I cannot give it to you in cars but for the year ending June 30th, 1905, we brought into Chicago 742,663 head -f cattle, 20,577 head of calves, 1,241,057 head of hogs.

Q. The Stock Yards report here would show the number of cars that you brought it, would it not?

A. Yes, but that is the calendar year and not the fiscal year. Your inquiry was as to June 30th, 1905.

Q. Have you a statement there for the calendar year so as to get at about how m-ny live stock you delivered in Chicago?

A. Yes, here is the Official Report of the Stock Yards Company, the r rec-, and that shows that the C. B. & Q. brought into Chicago 55,365 carloads of live stock.

Mr. DAWES:

Q. In what year?

252 A. The year 1904, and for the year 1903 56,255.

Mr. COWAN:

Q. Now you stated yesterday the amoun- of the loss of damage claims which you paid altogether on live stock and attendants in charge of live stock. I have forgotten the figures, but, for the purpose of calling it to the court's attention at this tim-, can you repeat that?

A. Forty one thousand and some odd dollars.

Q. Forty one thousand and something, a little over forty thousand?

A. It is a little over forty one thousand.

Q. That is the loss and damage paid on the total live stock business, not only into Chicago but into all other markets, was it not?

A. No sir, that is the live stock damages paid by the C. B. & Q. proper. That is the inquiry.

Q. You mean by that——

A. That is the line east of the Missouri River.

Q. You mean that don't include the li-s west of the Missouri river?

A. No sir.

Q. And don't *li*clude the loss or damage that happened west of the river?

A. No. It includes damages that cover live stock shipments to Chicago and it might have been live stock shipments to other places. We handle live stock east of the Missouri River to other markets than Chicago.

253 Q. Did that include the damage to shipments that came into St. Joseph, Kansas City and South Omaha?

A. No.

Q. You are certain of that?

A. Yes.

Q. I wish you would get a statement showing what it was that was paid for the lines west of the river.

A. During the same period?

Q. Yes.

Mr. DAWES: You mean showing that that is the loss and damage on this 50,000 cars?

A. Yes, that we have paid.

Q. Forty one thousand dollars on some 50,000 cars?

A. Yes, that is we have paid that. We might have other claims that amount to $50,000 that we have not paid.

Q. You have already paid eighty cents -r thereabouts a car?

A. Yes sir.

Mr. COWAN: I would like you to make up a statement of the total amount of loss and damage claims paid by your system of railroads, known as The Burlington System and let that cover a period of a sufficient number of years to show what the average ought to be, and, opposite the number of carloads that you handled, the total carloads handled during that same period.

Mr. DAWES: I object to that, your Honor.

The COURT: You want *jim* to furnish it, don't you?

254 Mr. DAWES: I object to it for the reason that it involves us in too much labor.

The COURT: Well, that is a matter that you need not discuss here. You need not furnish it if you don't want to*o*.

Mr. COWAN:

Q. Didn't you testify before the Inter State Commerce Commission in the Cattle Raisers' case against various railroads, including your line, that the total loss and damage claims for the year 1904 for your system of road, paid and that you expected to pay were $47,000?

A. Well, I don't remember what the figures were. That was true of the -ondition of affairs, whatever was testified to there at that time. Those figures were obtained from our records.

Q. Your total traffic in live stock runs almost into the hundreds of thousands of cars altogether on your system, does it not, per year?

A. East and west?

Q. Yes.

A. Well, it does and it don't. Now, there is a good deal, in arriving at those figures, there is a good deal of duplication. For example, live stock that is shipped from points west of the Missouri river will go into Omaha and it will be counted as an Omaha shipment, but it may pass on from Omaha to Chicago -nd it is in there twice.

Q. What percentage of the shipments you ship into Omaha
255 from the west, do you also ship out as live stock going out of Omaha?

A. Do you mean as to what percentage of live stock we take in that moves through there?

Q. Well, take the Stock Yards Report. Have you got the Omaha Stock Yards Report?

A. No, I have not. I have never calculated on that at all and I would not care to make an estimate; I have not studiee the f-gures at all.

Q. Among other things that you put into the expenze of handling this business, is the unloading at yards for the purpose of feeding. Is it not a fact that that does not apply on these shipments in question from point- this side of the Missouri River except where there is some accident or another?

A. Well, we have quite extensive feed yards at Galesburg and people from Iowa have fed their cattle there right along at Galesburg. Galesburg is 163 miles from Chicago. These people have fed there right along, for reasons best known to themselves. It is not to our interest to encourage these stops for feeding. When we pick up a man's cattle or hogs in Western Iowa we would much prefer to take them to Chicago instead of unloading and loading them up again at intermediate points.

Q. Do you know what percentage of the live stock that comes from Iowa to Chicago stops to feed at Galesburg?

A. No, I do not.

Q. Isn't it a very small percentage?
256 A. I don't know.

Q. Don't you know that it is a fact that the live stock shippers of Iowa are clamoring for service that will put their stock into Chicago without stopping to feed?

A. Some of them are and others are not.

Mr. DAWES:

Q. Are you paid for that service?
A. We charge for the feed that is furnished.
Q. I mean for the service of loading an- unloading?
A. No sir.

Mr. COWAN:

Q. What do you charge per car for feeding?

A. We don't charge per car. I don't recollect what the feeding charges are but we charge so much per ton for the hay. I don't know whether it is $15.00 a ton or higher or lower. That varies somewhat with the market for hay.

Q. Are you able to state that it is not a fact that the profit in the

feeding is equivalent to taking care of the unloading in the feeding at Galesburg?

A. I don't know whether it is or not, I never have made any figures on it. Whether we made money out of it or lost we would have to provide the facilities.

Q. Y-u made the statement that you had to do without the use of equipment while you stopped to unload and feed?

257 A. Well, I think that is a self evident fact. We could not have the cars standing on the side track at Galesburg, for example, and have them moving to Chicago at the same time.

Q. These feeding yards are at division points, are they not?

A. Yes sir.

Q. That is the end of the run for the crew and for the engine?

A. Yes, for the crew but not necessarily for the engine, and it is not the end of the run for the cars at all.

Q. Do you know whether or not when you stop and unload one train and are ready to load another, whether you retain there the very cars out of which the cattle are unloaded?

A. It is all owing to the conditions prevailing whether we would do that or not.

Q. Sometimes you load them into the same cars and sometimes into others?

A. Whatever we consider to be the most economical proposition.

Q. Now, you say that one of the items of expense is the extra speed that you have got to run your trains at, to pick them up and run them along at twenty or twenty five miles an hour. If you do that thing, then you certainly are not liable for any damages in such a case, arre you, and you don't pay any damage?

258 A. We might be running a train at 25 miles an hour with live stock and some train ahead of it not loaded with live stock, something might happen to it and our live stock train would be paid out, and, if it was, we would have a claim for damages right away.

Q. The total of the risk incident to the character of the traffic is embraced in what you have to pay for it in the way of loss and damage claims, is it not?

A. I should say so, yes.

Q. Do you know what the actual cost of the train service is for hauling a train from South Omaha to Chicago?

A. No sir.

Q. How is that?

A. No.

Q. Do you know whether as a matter of fact it costs you any more or any less for train service for trains in which packing house products and dressed meats are hauled than a train in which live stock are hauled?

A. I have not made that the subject of any investigation at all, so I am not prepared to say.

Q. Mr. Baxter asked you if, in ascertaining the cost per car load (and I suppose the same ruling would apply per train load) you divided the expense between the passenger and the freight service.

Are you certain that your company keeps an account that shows a division of expense between passenger and freight service?

259 A. I don't know about that. It is something that does not come under my jurisdiction and it would have nothing whatever to do with my making rates or considering rates, it would have no bearing on the question at all. It is simply a matter of bookkeeping for the auditor. I would not change a rate whether he divided the expense between the freight and the passenger or whether he did not.

Q. Do you make rates of freight or adjust them with a view to a particular profit out of a particular class of traffic?

A. No, you cannot do it, because you don't know what the class of traffic is going to be or the volume of it or how it is coming to you or any thing about it.

Q. In your experience has there ever been any rule adopted or in use whereby rates are made with a view to giving a particular profit on any particular class of traffic, among other railroads?

A. I never heard of anything of that kind, and I don't see how it would *ge* practical or possible. If I found we were hauling live stock to-day for less money than we should have, how could I change my rates? If I discover, for example, that instead of 23½ cents from the Missouri River to Chicago on live stock, I ought to have thirty cents, how am I going to get at it?

Q. You would have to search me.

A. Some of you gentlemen that ask these questions might

260 try to answer some of them.

The COURT: You mean that the competition prevents you.

A. Certainly, I cannot change my rate; I have either got to go out of business or do it at the going figure. It is a question of a choice between those two things.

Mr. COWAN:

Q. When those rates were established or at any time when those rates were changed, was it done with a view to produce a particular profit out of the business or because of competitive and other conditions which brought about the changes?

A. In order for me to accomplish anything of that kind or to calculate anything of that kind, I would have to be able to read the future, and, if I could do that I would not be Traffic Manager of the C. B. & Q. Road for two seconds.

Q. You stated yesterday that you did not know what it cost to haul a train or a carload from the Missouri River to Chicago, and I suppose that would apply as between other points. How are you able to determine, not knowing that, what is a reasonable rate?

A. We consider that traffic, along with everything *eose* that we handle, we consider the general results. We cannot say that we are going to have so much live stock business and therefore our rates on live stock will be so much, or, that we are going to have so

261 much lumber business or meat business or grain business. We don't know anything about it. Our rates are adjusted in line with the conditions that prevail, and, as I stated a moment ago,

we have either got to stay in at the going prices or quit the business.

Q. Not knowing the cost of the service, are you able in fixing the rates or adjusting them or changing them, to determine what a reasonable rate is from the cost of the service or the profit in the transaction?

A. I do not know that I understand that question if I have not already answered it. We don't know anything about the volume of any particular traffic that we are going to have. We cannot say that our rate on live stock is going to be so much and that we are going to have so much live stock and that the live stock shall produce so much gross revenue. We will not be able to tell anything about it. We cannot tell what the business of a railroad is going to be for the simple reason that we don't know what the traffic is going to amount to at all. One year twenty per cent. of our business may be live stock and the next year ten per cent. of it might be live stock and fifty per cent. of it some other commodity. The conditions change with every hour and every day and year.

The COURT:

Q. Suppose you had all this business yourself, couldn't you get at a basis?

262 A. I don't know how I could. How do we know what we are going to have?

Q. Couldn't you base it on last year's experience?

A. I don't think we could. I think even if we had it all ourselves, I don't know really what we would do. It is the conditions which govern us, and we endeavor to fix our rates on what we consider a reasonable basis to-day. Some of them we think are reasonable in themselves and some of them are unreasonably low, less than they should be.

Q. What your experience has been, I suppose is that the competition is really what controls the situation?

A. That is it. If we don't want to do any class of business to-day we can quit, we can say that we don't want it. If I put in a rate that is higher than any other carrier's rate, that is equivalent to saying that we don't want it. Nobody pays us a premium for doing business.

Mr. COWAN:

Q. Are the rates as they exist to-day on the various commodities, adjusted on the basis of the cost of the transportation? You mentioned several commodities.

A. The cost is not the only element that enters into consideration in adjusting those rates.

Q. And that never has been the case?

A. No, there are other elements. The principal element in the fixing of rates everywhere in this country today is the competition, either one kind or another.

263 Q. You speak of the competition; what competition is there in the district of country this side of the Missouri River which affects the amount of the rate, take that territory in which the 23½ cent rate prevails.

A. What do you mean?

Q. What competition is there which affects the amount of the rate?

A. That is what competition is there that makes the rate 23½?

Q. Yes.

A. I can remember a time when the rate in the same territory was $75.00 a car, and everybody thought it was an extremely low rate.

Q. From where?

A. From all through this country where the 23½ cent rate applies.

Q. When was that?

A. That was probably twenty years ago or fifteen.

Q. Don't you remember a time, too, when it was lower than it is to-day?

A. As I say, all these figures are the result of competition of various kinds and in various forms.

Q. Haven't those rates been substantially fixed and varying very little now for ten or fifteen years from that territory?

A. There was a time when the rates were less than they are to-day, as you say. I don't recollect at any time when they were any higher within that period, although when you go looking back 12 or
264 15 years, my recollection as to the condition of affairs in the interim is not quite clear. I have so many figures in my mind that I cannot picture to myself the rate of this year with another, etc.

Q. In considering the changes of rates that take place now in that territory from points in that territory to Chicago, is it not a fact that the railroads have an asociation called The Western Traffic Line Committee, which association gives them an opportunity to meet through their respective traffic men and consider such matters?

A. It is absolutely necessary for the conduct of the railroad business of today, both in the interests of the shipper as well as the railroad, for them to confer with each other as to the conditions, and as to what can be done. One interest is so interlocked with another that one cannot act without affecting the other. We cannot make a rate from Western Iowa, from a local point in there, in Iowa—for instance, our road reaches Creston, Iowa, and yet if I undertook to adjust the rate from there I could not do so without interfering with my neighbors on either side of me.

Q. That is with the other lines?

A. Yes sir. I cannot do that. I can create a condition there that will upset their business, and they can create a condition
265 there or somewhere else that will upset mine.

Q. You find it necessary as a business matter to confer together with respect to it?

A. We talk this situation over at times, and sometimes we don't. I very frequently take up a report from Washington indicating that someone of my neighbors is taking an action about which he has failed to say anything to me.

Q. Has there been any material reduction in those rates for the past ten years?

A. I have given this matter of the rates east of the Missouri River practically no attention whatever for that period. Previous to 1902 I was in charge of the territory west of the Missouri River, and I am not familiar in my mind with the detail of all these figures.

Q. You have not given any attention to these rates then that are in question here from points this side of the river?

A. As to what they are as compared with what they were fifteen years ago. There have been material changes and I have not taken the time to look into it, see just what has been done there.

266 Q. The competition which you speak of is simply the competition, then, to get the business, is it not, Mr. Crosby?

A. Well, that is the only kind of competition that I know of between carriers, is one endeavoring to get it away from the other.

Q. And that has not reached the point of the reduction of the rates in this territory mentioned to Chicago?

A. Well, it has not—it has resulted in the establishment of the existing figures. There has been no competition that forces a change in them, that has forced a change in them.

Q. Do you know about a general advance in the hog rates to 23½ cents from 22 cents from all that territory in 1894?

A. No, I just stated that—I notice this, however, that we are getting less revenue for hauling a car of hogs to Chicago than we are of cattle, although our service is practically the same.

Q. Are you able to name any conditions which warrant a difference — adjustment and relation of the rates between packing house products and dressed meat and live stock from St. Paul to Chicago than from Missouri River to Chicago?

A. Well, the St. Paul competition changed that basis of rates up there to a different scale; that is the result of competition. We have competition at St. Paul that we do not have at the Missouri River.

267 Q. Did competition produce an advance in the live stock rates?

A. Where, from St. Paul? Have they been advanced?

Q. I don't know whether they have or not. I just asked.

A. You asked me if competition produces them. Competition may have forced it and that competition ceasing may have enabled things to get back to their normal basis.

Q. Well, do you know any difference in conditions which affect traffic between Chicago and Buffalo and Pittsburg and New York which should require a different adjustment of the rates between live stock and packing house products and dressed meat?

A. Well, the character of the service, the business, volume of tonnage, and so forth, may be entirely different, the proportion of one to the other in this territory than there is in the Missouri River territory. I do not know what actuated the Eastern lines in adjusting their rates the way they have to Pittsburg, Buffalo and New York.

Q. They have always been adjusted, though, on the basis that packing house products and dressed meat paid the higher rate?

A. I don't know that they have, they happen to be that way today, I don't know how long that history is, how old that is.

268 Q. Are there any differences in the conditions with respect to the cost of handling live stock now and dressed meat and packing house products now from what it was four or five years ago?

A. There may not be as to the relative cost, but the conditions under which they are transported are different.

Q. I am speaking of the relative cost between the two. Now, you spoke about the cabooses being an element of cost, isn't it a fact that you use the ordinary caboose in transporting,—for use in all sorts of trains?

A. No, sir. We have different classes of caboose that we use, a different caboose on these trains loaded with live stock. Sometimes we have eight or ten or twelve men, or twenty men, to accommodate in one of these trains. The ordinary caboose that we handle a freight train with would not take care of them. You take a train of live stock, Mr. Cowan, from Missouri River to Chicago and the way we are required to run it it is about as comfortable a way for a man to come over as you can get. That would be especially so from Missouri River. You could get in one of these cabooses in a bunk and lie down and go to sleep and you don't know anything about it until it gets to Chicago the next morning. You don't know whether the stock is up or down.

269 Q. Unless the train had a wreck. Now, the cost of the stock yards you speak of. You said the stock yards of your company cost a million dollars. I would like to have you tell me who of your company knows what it cost to build these stock yards?

A. The auditor's office keep accounts. They know what these various yards cost.

Q. What person in the auditor's office knows what it cost to construct those stock yards?

A. Well, I don't know what particular individual, but the auditor in charge of the accounts knows, could satisfy himself so that he would be able to make a statement.

In that connection I would just like to add one thing additional as to the expense attending handling of live stock, that does not entail on other freight, and that is the matter of furnishing scales for the weighing of live stock at stations. I left that out.

Q. Furnishing flat scales?

A. Yes, sir—no, sir, wagon scales, so they can drive a steer on it or half a dozen steers and weigh them.

Q. Do you furnish very many of them?

A. Yes, sir.

Q. How many?

A. Quite generally.

Q. Why do you furnish those scales?

A. Competition forced it.

Q. That is you furnished them because other roads do?

A. That, and then a great many people imagine that if
270 they weigh their stuff on scales that belong to an individual, that there might be some disparity in the weight, might be something wrong about it; whereas, if the scales belonged to somebody that has no particular interest in whether they weigh heavy or light, they might get a little better system of weighing. So you might say, public opinion in some of these communities forces the railroads to put in the scales.

Q. Do you know how many scales you have in on your line in the State of Iowa?

A. No, sir.

Mr. DAWES: What were you going to say?

A. He wants to know how many scales we have. I do not know.

The COURT: Do you have them at every station?

A. No, sir, not all stations, but the majority of them.

Mr. COWAN:

Q. Now, those conditions with respect to the scales, with respect to the stock yards, and with respect to carrying the men, have been the same right along in the transportation business for years, haven't they?

A. Yes, but the method of transportation of live stock has changed.

Q. What method?

A. Of handling, the kind of cars we load in and everything else.

271 Q. Since when?

A. In the last 15 years. The couplers have come in. In the olden time when we passed men in charge of live stock, we had the link and pin coupling which would bring everything up standing when we stopped the train.

Q. That has been 15 or 20 years ago?

A. I say, conditions have changed.

Q. But they have not changed in the last eight or ten years?

A. Well, the equipment of live stock cars has changed, is increasing, that is, these new appliances have increased every year, more and more of it.

Q. You mean a greater proportion, as you put on air brakes?

A. Yes, sir.

Q. Haven't you been handling practically altogether air brakes and regularly equipped cars substantially such as are now in use for eight or ten years?

A. Well, I know that eight or ten years ago a portion of our equipment, at least were equipped that way, I do not know what extent, that is, what percentage of the whole.

Q. Now, those same conditions, those same relative conditions for handling dressed meat and packing house products and live stock apply in other parts of the country, do they not?

A. How is that?

Q. These same relative conditions between handling the live stock and the dressed meat and packing house products
272 apply in shipments from here to Buffalo, they have to use stock yards and stock cars and take men in charge, do they not?

A. Yes, sir. They do not give people return transportation, for example.

Q. How is that?

A. They do not furnish return transportation. If a man goes from here to New York, for example, with a train load of cattle, he pays his fare back.

Q. Who takes care of the cattle then?

Mr. DAWES: I object to this particular line of inquiry as to what is done elsewhere under other conditions. It cannot concern or throw light on this particular subject.

The COURT: The objection is overruled.

Mr. COWAN:

Q. The railroad assumes the burden, then, of taking care of the cattle themselves?

A. Well, the railroad companies assume it whether there is a man in charge or not. That is the reason we have all these claims, we have a claim for a steer that gets down and has its neck broken or leg broken, or is killed, whether a man is in charge of the live stock or not. Now, the man in charge has not prevented anything of that kind occurring, in all probability he don't know anything about it until after the car arrives at the market, but we are asked
273 to foot the bill notwithstanding the fact that we have passed a man in charge of that live stock for the very purpose of preventing its getting down and getting injured.

Q. And you say he does not look after his stock in transit?

A. Well, I don't—if he does, how do those things occur?

Q. Who is Mr. Darius Miller, Mr. Crosby?

A. He is First Vice President of the Chicago, Burlington & Quincy Railroad Company.

Q. How long has he been such?

A. About three years and a half, I think.

Q. Previous to that time what position did he hold?

A. He was Vice President of the Great Northern Railway.

Q. Hasn't he been connected with the Burlington System a great many years?

A. No, sir.

Q. I was under the impression that when he testified in this case in 1902 that he testified that he was at that time and had been for some time Vice President of the Burlington?

A. I think if you will look at his testimony you will find that he went to work for the Burlington, probably, January 1st, 1902.

Q. Who was Mr. Delano?

A. Mr. Delano was General Manager of the C. B. & Q. Railroad east of the Missouri River.

274 Q. I believe that is all.

Redirect examination.

By Mr. SEVERANCE:

Q. Isn't it a fact that live stock cars are on demand of shippers at local points sent to those local points and often lay there for days

before they are loaded, and isn't it true that a large part of the live stock equipment of every railroad company is idle because it is waiting the pleasure of the shippers at local points?

A. There is more or less of that done.

The COURT: Is that true more of live stock cars than other kind of cars?

Mr. SEVERANCE: Yes, than packing house cars, that packing house products are shipped in—those cars belong to private car lines, as a rule, do they not?

A. Yes, sir.

Examination by Mr. JEFFERY:

Q. If a cattle train were wrecked on any road, or a meat train were wrecked, which would cost, under practically the same conditions, suppose the car turned over, which would cost the company the most in dollars in your estimation?

275 A. Well, that is a pretty hard question. We might turn the car of live stock over and break the necks of every one that is in there and have to pay for them, and then we might turn it over again and might break the neck of only one. We might turn a car load of meat over and not damage any of it.

Q. Well, from your experience as a railroad man do you think that there would be a more likelihood of turning over a cattle car and not hurting any of the cattle than there would be of turning over a car of meat without damaging it?

A. I think the susceptibility to damage would be in favor of the live stock, it would be more apt to be damaged.

Q. A good many per cent., don't you think, Mr. Crosby?

A. Yes, sir.

Examination by Mr. RANSOM:

Q. I would like to ask a question. Have you got rates tributary to South Omaha and the western part of Iowa into South Omaha?

A. Yes, sir.

Q. Established rates, all the railroads have?

A. Yes, sir.

Q. Now, take the place you mentioned, Russell, Iowa, was it?

A. Yes, Woodburn, Iowa, I think.

Q. What did you say the rate was from that point into South Omaha?

276 A. Woodburn, Iowa; the rate from that point to South Omaha is 14.158 cents per hundred weight on cattle.

Q. How far is that place from South Omaha or the River?

A. It is 155 miles from South Omaha.

Q. Have you rates established and published into South Omaha from Northwest Missouri?

A. Yes, sir, we have some rates from there.

Q. And have you rates established and published into St. Joe from Missouri?

A. Yes, sir.

Q. Now, can you state what the rate is into the Missouri River

from Northwest Missouri and Western Iowa, say fifty miles from the River?

A. Well, here is, take Calista, Iowa; that is fifty miles from Pacific Junction. The rate to South Omaha is 10.68 cents per hundred weight on cattle.

Q. Now, does that same rate prevail at all points about the same distance from the Missouri River east?

A. Yes, sir, here is Red Oak, Iowa, that is forty five miles from Pacific Junction—Pacific Junction, by the way, is 25 miles from South Omaha. The rate is 9½ cents on cattle.

Q. Well now, take points 75 miles from the Missouri River. What is the rate there?

A. Prescott, Iowa, to Pacific Junction is 72 miles; under the tariff we call it 75. The rate is 12 cents.

277 Mr. SEVERANCE: That is the rate to South Omaha?

A. Yes, sir.

Mr. RANSOM:

Q. That rate prevails at all points the same distance?

A. Practically, yes, sir.

Q. Now, take a point a hundred miles way?

A. Thayer, Iowa, is 102 miles from Pacific Junction.

Q. What is the rate there?

A. 13.53 cents on cattle.

Q. That is the same on all points about the same distance from South Omaha and the Missouri River?

A. Yes, sir, that is based on a distance tariff, the Iowa distance tariff.

Q. That is 13 something, you say?

A. 13.53 cents.

Q. You cannot state what the tariff is from these several points mentioned into Chicago?

A. The rate is 23½ cents.

Q. 23½ cents?

A. Yes, sir.

Q. Where is the dividing line between Chicago and the Missouri River?

A. That is, what do you mean?

Q. Where you commence to scale it down towards Chicago, and abandon the 23½ cent rate?

A. Well, that is, I don't know just what point that is.

Q. Do you know where it is on the Great Western?

A. No.

278 Q. Do you consider these rates that you have mentioned at 50 miles, 75 miles and 102 miles, approximately, from the Missouri River and into South Omaha a fair rate as compared with the 23½ cent rate from the River and from South Omaha into Chicago on live stock?

A. Well, those rates are given to us by the Iowa Commission. It doesn't make any difference what we think of them.

Q. Well, you have considered those rates, haven't you?

A. Well, we have accepted them.

Q. Is it your opinion they are too—withdraw that—do the cattle and other live stock move out of this territory in Western Iowa, which is tributary to the Missouri River, both to the Missouri River and to Chicago, on those rates?

A. Yes, sir.

Q. They do move out on both rates?

A. Yes, sir.

Q. That is, they are carried, the live stock is carried, from those points to South Omaha and at the same time other shippers from the same territory will come to Chicago?

A. Yes, sir. Some men, the same man will ship them in both directions.

Q. Have you examined the rates into Chicago from the dividing line?

A. No, I cannot say that I have.

279 Q. Don't you know as a matter of fact, Mr. Crosby, that after you do abandon the 23½ cent rate, as you get farther east, that the rate is scaled down more rapidly towards Chicago than it is to the Missouri River west of that?

A. Well, I think it is because our Interstate rate would naturally be on the——

Q. It doesn't matter what it is, but that is the fact, isn't it?

A. Yes, sir, that is a fact.

Q. Now, do you know of any place except at the Missouri River where shippers of live stock are given this privilege to unload except at South Omaha and other Missouri River points?

A. No, I don't know where—Well, they have the same privilege at St. Paul and Minneapolis.

Q. Yes, St. Paul and Minneapolis?

A. Yes.

Q. You have no custom there, no rules in force by which if a shipper is dissatisfied with the South Omaha market, for instance, or the St. Joe market—say South Omaha market, he could ship to St. Joe?

A. No.

Q. And you have no rate that if the live stock was shipped to South Omaha from the west, he could unload there and try the market, and then if he was dissatisfied with it, ship to Cedar Rapids?

A. Nothing except on the Mississippi River rate. He would have that privilege.

Q. There is no such favorable arrangement made for him as there is to ship to Chicago?

A. No.

Q. No such favorable rate on any other point?

280 A. Well you mentioned Cedar Rapids, that is——

Q. There is a packing house there?

A. They do not handle cattle, however. For example they would have the same privilege of shipping to Cedar Rapids that they would to Chicago.

Q. But not on a single rate?

A. The Cedar Rapids rate is made either by combination of the

Missouri River rate or the Mississippi River rate used as a maximum. We would not charge a higher rate to the intermediate point.

Q. What is the rate from South Omaha to Cedar Rapids?

A. I don't know. I could not tell you, but as a rule the Mississippi River rate from all that territory makes a less rate than the combination of rates on Omaha.

Q. There are no rules adopted by the railroad company and no custom in vogue by which a man out here at Monmouth could ship cattle to Omaha at the established rate and then if he didn't like the rate ship to Buffalo?

A. No.

Q. And no inducements are offered to him to ship back to the Missouri River, are there?

A. No, sir.

Q. No such favorable arrangement is made in Chicago as there is at Missouri River points?

A. Well, the live stock rates are practically on the combination of rates through Chicago, for example—we do not publish any rates from western territory to territory east of Chicago. We have
281 no system of through rates.

Q. Mr. Crosby, when you are making up trains of live stock from these Missouri River shipping points, like Sioux City, South Omaha, St. Joe, and Kansas City, they are made up right there, ain't they at that one place, aren't they?

A. Oh, yes, sir.

Q. And when a live stock raiser or shipper in this territory east of the Missouri, Northwest Missouri and Western Iowa is about to ship his hogs to South Omaha or any Missouri River point, can he depend exactly, as exactly on the time when he will get to South Omaha as he can calculate to come to Chicago?

A. Well, he knows what his schedules are in both directions.

Q. Well, the trains are scheduled to Chicago so that you know when they are going to get here, don't you?

A. Well, we try and have them make the schedule.

Q. You testified that you have to get here at a certain time?

A. Yes.

Q. Now, as a matter of fact the drift, then, the schedule of trains is towards Chicago. Now, if a man wants to ship out of this territory to the Missouri River, he cannot make as close calculations as to when he will get into the River as he can to get into Chicago?

A. Well, I don't see why he can't, because we have train service.

Q. You make up live stock trains on your road in this
282 territory, Western Iowa, and Northwestern Missouri regularly to come to South Omaha?

A. Well, we have regular schedules, they are not known as live stock trains. They are put on to our merchandise trains, trains that handle general freight.

Q. They come on your regular local trains into South Omaha?

A. Yes, sir.

Q. And your local trains do not get in there on schedule time as exactly as your live stock trains do here in Chicago?

A. Well, I don't know whether the service is any better in point of arrival at one place than the other.

Q. You say you don't know. Well, you have no live stock trains made up in this territory?

A. No, sir.

Q. You carry it on local trains?

A. It is carried on local trains.

Q. So all the delays that happen to a local freight train will happen to a man that is shipping out of this territory into the Missouri River?

A. Yes, sir.

Q. You say that they move out of this territory to Chicago and to the Missouri River?

A. Yes, sir.

Q. Now, why do they move out under those rates?

A. Well, certainly the rates do not prohibit movement, they seem to be fairly adjusted in accordance with the conditions. The
283 shipper makes up his mind that, this lot or today I will ship to Chicago with this class of stock, and tomorrow I will ship to Omaha, or may divide his business.

Q. He may ship to either place under those rates?

A. Yes, sir.

Q. And does do it. How long do you say that has existed?

A. These rates have been in effect there for years; I do not remember how long.

Q. And is what you have testified to about South Omaha applicable also to St. Joe market?

A. Yes, sir.

Q. Does it apply to the Sioux City market, or do you know?

A. I don't know. I have nothing to do with Sioux City. I imagine those conditions are about the same.

Examination by Mr. LYNDE:

Q. I would like to ask a few questions. These markets you name in the Black Hills country, Gillette, and others on your line, what is the average distance of those points from Chicago—take Gillette. I refer to the points where the 48 cent rate controls?

A. About 1200 miles.

Q. How far from them to the Missouri River?

A. No, I will take that back, it is less than 1200 miles. I
284 think Gillette is about 650 miles from the Missouri River.

Q. That is 650 miles from the Missouri River and then 500 in addition to Chicago?

A. The Chicago distance added.

Q. So the shipper from Gillette at the 36 cent rate to the Missouri River—on a shipment from Gillette the 36 cent rate to the Missouri River applies on the 650 miles?

A. Yes, sir.

Q. As against the 12 cent as to the 500 miles to Chicago, is that it?

A. Yes, sir.

Q. That is true of the other points, too?
A. Yes, sir.
Q. That is all.
The WITNESS: I would like to make one explanation. You understand our rates from Gillette and Sheridan are made for a longer distance than your rates from Belle Fourche. The short line fixes our rate, but the lay of the country is such that our stations for 200 miles are in competition with you and we have to carry a blanket rate.
Q. Whether the Elkhorn or the C. B. & Q., the fact is the rate into Omaha is very much larger per mile than the rate from Omaha on to Chicago?
A. Yes, sir.
Mr. SEVERANCE: Over twice as much.
Mr. RANSON: Just exactly three times as much for the
285 same distance.

WILLIAM A. GARDNER, called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

The COURT: Your full name, please?
A. William A. Gardner.

Mr. BAXTER:

Q. Mr. Gardner, what is your occupation?
A. William A. Gardner, General Manager Chicago & Northwestern Railway.
Q. With what railroads in the United States have you been connected; in what capacities, and what have your duties related to?
A. I have been telegraph operator on the Alton and Illinois Central; trains master on the Atchison road; clerk and operator, train master, assistant superintendent; superintendent; assistant general superintendent and general manager of the Northwestern.
Q. Well, have your duties related to the actual movement of traffic over your lines?
A. Yes, sir.
Q. On that portion of your road which lies between the Missouri River or South St. Paul on one hand, and Chicago on the other, what is the maximum number of loaded cars of live cattle
286 and live hogs that can be hauled by one engine at the speed which is required for that service?
A. From 25 to 30 on the main line. There is a difference, of course, in the amount of time you have to make the market in; that governs the rate of speed at which you have to travel. And the tonnage for a number of cars in a live stock train is the tons or number of cars that you may move between terminals at a certain rate of speed; that is, you cannot stop and set out at the foot of each grade, and fill up when you get over the grade; you cannot do any

switching at terminals; therefore the tonnage of the live stock train is considerably less than that of any other commodity.

Q. On that portion of your road, what is the maximum number of loaded cars of dressed meat or prepared products of cattle and hogs that can be hauled by the same engine at the speed which is required for that service?

A. I do not believe I understand that question.

Q. My first question was as to the number of loaded cars containing cattle and hogs?

A. Yes, sir.

Q. That could be hauled at the speed required for the live stock service?

A. Yes, sir.

Q. Now, my other question is, the number of cars, the loaded cars of the product that can be hauled at the speed required to haul such products?

287 A. Well, about five more, probably, thirty five cars.

Q. Well now, what is the maximum number of loaded cars of ordinary dead freight that can be hauled by the same engine at the speed which is required for that service over the same road?

A. 35 to 40, dependent on the capacity of the cars.

The COURT: More still?

A. Oh, yes.

Mr. BAXTER:

Q. What is the average weight of the cars employed on your road in the transportation of live cattle and hogs?

A. About 18 tons and a half. That includes the bedding and offal.

Q. Includes bedding and manure?

A. Yes, sir.

Q. What is the average weight of cars on your road used in the transportation of dressed meat and prepared products?

A. About 22 tons. And that allows for the ice, five thousand pounds of ice on the car.

Q. What is the average weight of cars employed in the transportation of ordinary dead freight?

A. About 17 tons.

Q. What is the average weight of the contents of cars on your road when loaded with live stock or live hogs?

A. It averages exactly 9.7 for the last fiscal year ending June 30th.

288 Q. What is the average weight of the contents of cars on your road when loaded with the dressed or prepared products of cattle or hogs?

A. 12.2 tons for the same period.

Q. What is the average weight of the contents of cars on your road when loaded with ordinary dead freight?

A. 13.3 tons for the same period.

Q. On that portion of your road which lies between the Missouri River or South St. Paul on the one hand, and Chicago on the other,

what is the average rate of speed at which trains of live cattle and live hogs are moved?

A. Well, a through train of live cattle and live hogs would probably average from 25 to 28 miles an hour. A train of cattle and hogs which was a pick-up train, and the average train of live stock on the Northwestern Railway comes from about ten different places, that would average about thirty five miles an hour running time.

Q. On the same portion of your road what is the average rate of speed at which trains of dressed or prepared products of cattle and hogs are moved?

A. From 20 to 22 miles an hour. We only move products on two trains, one of them is scheduled to leave Council Bluffs at 2 o'clock in the afternoon and get into Chicago at 2 o'clock the next afternoon, 24 hours for the 490 mile run. The other one leaves there
289 at 11 o'clock at night and gets here at 6 o'clock in the morning, 31 hours. We do not move products on any other trains than those two.

Q. On the same portion of your road what is the average rate of speed at which cars of ordinary dead freight are moved?

A. Well, from 12 to 15 miles an hour. That is what we intend to do. We do not always accomplish it.

Q. What is meant on your road by the tonnage rating of a locomotive engine?

A. Well, it is the number of gross tons that a locomotive will pull within a certain district, between terminals or over certain grades, determined by an actual test.

Q. By gross tons you mean the weight of the car and the contents?

A. The car and the contents, yes, sir.

Q. What is the average tonnage rate of locomotives used on that portion of your road in the transportation of live cattle or hogs?

A. Between Missouri River and Chicago?

Q. Yes.

A. From ten to eleven hundred tons, and 33 per cent. is the revenue tonnage.

Q. What is the average tonnage rating of locomotives used on the same portion of your road in the transportation of dressed or prepared products of cattle and hogs?

290 A. That will run 100 to 1250 tons, and 36 per cent. of that will be revenue tonnage.

Q. What is the average tonnage rating of locomotives used on the same portion of your road in the transportation of ordinary dead freight?

A. Well, that will run from 1200 to 2000 tons and 44 to 45 per cent. of that is revenue tonnage.

Q. By revenue tons you mean——?

A. The paying freight in the train.

Q. Take an engine that can pull a given number of tons over a given railroad at the rate of say twelve miles an hour, what effect would an increase of the speed to 18 miles an hour have upon the

tonn-ge which could be pulled by the same locomotive over the same railroad under otherwise similar conditions?

A. Well, probably it would reduce the tonnage one fourth. Of course everything would depend upon the weather conditions and wind and moisture.

Q. On that portion of your road what proportion of the trains in which live cattle or hogs are moved is composed exclusively of cars containing live cattle or hogs?

A. Well, I think last year we moved east bound 15,000 trains, that entirely, that is the aggregate number of east bound trains, freight trains, between Omaha and Chicago, and there is some 22 or
291 23 per cent. of those trains that were exclusively live stock trains.

Q. On that portion of your road what proportion of the trains in which the dressed or prepared products of cattle or hogs are moved is composed exclusively of cars containing such products?

A. Well, there wouldn't be any composed exclusively of products, because we do not have a full train of products any day; we only moved last year out of South Omaha something like 3500 car loads of the product, and that came 10 or 12 cars a day.

Q. Well, do you fill up those trains?

A. We do, invariably.

Q. To the capacity of the engine with other freight?

A. Yes, sir, invariably.

Q. What other freight?

A. Grain, merchandise and so forth.

Q. Do you fill them up with live stock?

A. Not ordinarily, because live stock does not move at the time the product trains move.

Q. On that portion of your road what proportion of the trains on which ordinary dead freight is moved is composed exclusively of cars containing ordinary dead freight?

A. I should not say more than twenty per cent. contained exclusively dead freight, because there is so many of them have small lots of stock.

Q. On the portion of your road between the Missouri River
292 and Chicago or St. Paul and Chicago is preference *is preference* given to trains loaded with live cattle and live hogs over trains loaded with dressed or prepared product of cattle and hogs, or over trains loaded with ordinary dead freight, or do all of your trains move upon an equality?

A. The train containing live stock is given the same preference over all other freight trains that passenger trains are given over all other freight trains, and in some instances they have preference over passenger trains.

Q. Will you explain to the court what those instances are?

A. Well, if a passenger train has a very long time, or is scheduled like some of the nights trains are not to arrive in Chicago before seven o'clock in the morning, and we come along to a terminal and there is two or three stock trains there, that it is essential to get in here by six o'clock we hold the passenger train half an hour and let

the stock trains come ahead, because they make just about the same time passenger trains do, and can keep out of their way, and the passenger train is able to make up its lost time of thirty or forty minutes and arrive on time, the result is we are not obliged to pay claims on the live stock.

Q. What effect, if any, does this preference, which you give to live stock trains have upon the movement of other freight trains?

A. Well, it delays them somewhat, at times, seriously. You will *in bear* that for instance when we are bringing six thousand
293 to seven thousand cars of live stock a month into Chicago, in January and February, in the spring months that is 1500 cars a week. Fifty per cent. of all that stock is loaded Sunday, and arrives here Monday Morning, and it takes all the equipment we have got in the way of locomotives to bring all those stock trains in here Sunday night, and get them in here Monday morning, and the dead freight has to lay in yards while we move the stock; and 25% more of it gets in here Wednesday morning, and there is also the same detention then to dead freight. The other 25% comes in the other days in the week, mornings, and it increases the detention to dead freight, it increases per diem that we have to pay on foreign cars, and it decreases the utilization of our own cars.

Q. On a portion of your road between the Missouri River and Chicago, what proportion of the cars intended for the transportation of live stock move to the point of shipment empty?

A. Practically all of them. We have no loading for the westbound stock cars, particularly in the stock season. There are sometimes when we can load oil in barrels, sometimes when we can load a little company coal, but there is no steady loading for the stock car.

The COURT: How about returning cattle?

A. Very few of them move from here, Judge. Some of them move north but very few of them west, they mostly come from the southwest, feeders. It is safe to say that not one per cent. of our stock cars move west under load.

294 Mr. BAXTER: Well, how is it with reference to cars used in transporting packing house products?

A. They all go empty also.

Q. Now, how it is — reference to cars intended for the transportation of ordinary dead freight?

A. Well, 27% of all our car mileage is empty car mileage, and of that 27%, 9% of it is stock car empty mileage, 18% is dead freight mileage. Cars that we pay dead freight mileage on.

Q. Then out of a hundred live stock cars, as I understand you, practically all of them would go back to the points of loading, empty?

A. Practically.

Q. Out of one hundred cars used for the transportation of freight, dead freight, not more than 18% of them would go back empty?

A. Well, I don't think eighteen would go back empty, I don't know as you correctly understood my reply, and I have not got in my head the empty car mileage of the Northwestern Railroad *vs.*

The loaded car mileage. I can get it when I go to lunch, I have got it on my desk. If 100 represented the total mileage of all cars on the Northwestern Railroad, 75 would represent all the cars that moved loaded on the Northwestern Railroad, 9 would represent all the stock cars that moved empty, and 16 would represent all the dead freight cars moved empty, but it would not be in the relative relations of a hundred, because the dead freight mileage is way
295 above the empty stock car mileage.

Mr. COWAN: I have the figures. The figures show the total car mileage, 29.69 per cent. is empty on the C. & N. W.

A. That is 1904?

A. 1904.

A. We beat that a little last year, it is about 27%.

Mr. BAXTER:

Q. On that portion of your road, is the movement of cattle and live hogs continuous throughout the year, or are there periods when practically little or any is moved?

A. May to September are the light months, and the heaviest months are during the winter, January, February and March, I should think probably one half of all the stock we move would move in December, January, February, March and April.

Q. Well, now, during that portion of the year, when the movement of the live stock over your road is comparatively light, can you find any considerable, can you find other loading for any considerable portion of live stock cars, or do they have to lie idle?

A. No, they lie idle generally.

Q. On said portion of your road is the movement of the prepared or dressed product of cattle and hogs continuous throughout the year or are there periods when there are practically no movements of them?

A. I beg pardon, I didn't get that.

Q. I say, is your movement of the products practically
296 continuous or are there periods during the year when you move but little of that?

A. No, that moves with regularity, about the same number of cars every day.

Q. Then I understand that all those cars go back empty?

A. They all go back empty, yes, sir.

Q. During the year ending June 30, 1905, what amount of revenue was received by your company for the transportation of live cattle and live hogs and what amount was claimed for damages to said cattle and hogs and to persons travelling in charge of it?

A. Well, I think $3,000,000. our revenue was; we paid for damages to stock $63,000.

The COURT: 53 or 63?

A. 63. We paid for personal injuries $7500., but that is not a fair exposition, because the previous year we paid $42,000. and the previous year before that ten or twelve thousand dollars. I think the personal injuries, therefore, will average $25,000. a year riding in cabooses. Our damage and loss is about a dollar a car. I had

occasion to look that up two years ago in Iowa before the Legislature, and that is about the way it run, and I think it runs that way all the time.

The COURT: Have you looked it up as to the other products, dressed meats?

A. Yes, sir.

297 The COURT: I suppose you are going to ask that (addressing Mr. Baxter)?

Mr. LYNDE: I don't think Mr. Baxter heard you.

The COURT: Are you going to ask him about the damage per car for dressed meat?

Mr. BAXTER: My question has not been per car.

The COURT: He gave it to you, I notice.

Mr. BAXTER: It was a voluntary statement, I didn't ask for it.

Q. What is the damage paid on packing house products either in gross amount or per car?

A. The average damage on packing house products has been, for the last three years $5,000 a year. There is no damage paid on delayed packing house products, unless it be you are unfortunate enough to have it in a place where you can't ice to it, which seldom, if ever, occurs. Damage to packing house products is caused by wrecking where you break up a car and break up the contents so there is no salvage left.

Mr. LYNDE: What does that average per car?

A. About 85 cents a car. Of course, that includes interior points this side of the Missouri River.

Mr. BAXTER: Can you state the amount of revenue derived by your company during the year ending June 30, 1905, from the handling of packing house products and the amount paid in claims on account of delays, loss and damage to packing house

298 products?

A. Why, I think the revenue is $320,000. on packing house products.

Q. And the damage $5,000?

A. $5,000.

Q. During the year ending June 30, 1905, what was the tonnage of live cattle and live hogs carried over your road?

A. About one million tons.

Q. During the same year what was the tonnage or dressed or prepared products of cattle and hogs carried over your road?

A. 165,000 I think.

Q. During the same year, what was the tonnage of ordinary dead freight, other than the product of cattle and hogs carried over your road?

A. About $30,000,000.

Q. Are there or not stock yards or stock pens on your Road which are necessary for the transportation of live cattle and live hogs, which are not used in the transportation of dead freight, and if so, state the number of them and their cost?

A. Well, we have, eleven hundred stations on the Northwestern

Railroad. At 983 of those stations, we have stock-yards. There are 2,000 covered pens in these stock-yards, and there is a thousand of these pens that are paved. There is some 740 odd that have got scales. There is about 800 of them that have got water facilities. There is 600 of them have bins for storing bedding, sand and gravel, and one thing and another, and there is a large number of
299 them that have independent tracks that are only utilized for the purpose of stock, I think ¾ of them. They cost about $700,000. for the yards, that is the lumber and putting up the pens. The independent tracks cost $250,000.

Q. That makes a total of——

A. About a million dollars, I think.

Q. What does it cost per annum to maintain and operate them?

A. Well, these yards are built in a very substantial manner, but they are subjected to very rough usage. These country stock-yards you know, are not alone used for the purpose of driving in a carload of stock, and then driving it out through the chute into the car; they concentrate the stock there more or less, some times they keep it two or three days, notwithstanding we object to it, and the steers fight and the hogs root. We have got to have feeding troughs, some of them high for the cattle, and some of them low for the hogs; we have got to have water in the troughs the same way. And you have got to have pens divided up, so that men can put in select stock that he is going to ship and all that, and undoubtedly they depreciate from ten to twelve per cent. a year. And there is one point in connection with that, that is that if the Northwestern Road to-morrow endeavored to duplicate its pens it could not do it for double for what these cost. Lumber that went into these pens cost ten to
300 fifteen dollars a thousand. Common boards now for fencing cost $24. or $25. a thousand on the line of the Chicago & Northwestern Railroad. Therefore, the cost of repairs to stock yards are very much out of line for comparison with their original cost. And this cost of the yards I have not included anything for the ground at all, although that is probably worth from fifty to seventy-five dollars at each station. And among other things you should bear in mind that probably in 50% of the cases the water at the stations does not serve the stock-yards. The passenger stations are situated in the middle of the towns where they will best accommodate the public. The stock-yards are situated away out on the outskirts where they will be of the least annoyance to the public, and it is essential you have independent water plants at stock yards the same as you do for watering locomotives, and you have a good many stations where you have no water for locomotives that you are obliged to have water for stock yards. And in these modern days municipalities are getting after railroads about draining stock yards and cleaning them out, things we did not use to pay much attention to, but it is a matter of very considerable extent now, that thing.

Q. In your statement of the cost of operation and maintenance per annum, did you include anything for annual depreciation, wear and tear, interest on money invested?

A. Oh, yes, I should say ten or twelve per cent. per annum would

be a reasonable depreciation, but that is a pretty large de-
301 preciation.

Q. Explain for the purposes of the record the difference between the manner in which live stock cars are constructed and the ordinary box-car in which ordinary dead freight is carried?

A. The live stock car is all open construction for the purpose of ventilation, slats, and in feed and water cars there is provision made along the side for water, and at the top for hay-racks, etc. It requires a peculiar construction of the car, and a car that is liable to depreciate rapidly, and to be injured, if it receives very serious concussions or jars because your braces are cut right off in the middle in feed and water cars to introduce feed and water racks. The roof of the car is not so secure as on the ordinary car, because it is a sort of hip arrangement a dome in the middle for the purpose of putting in the feed.

Q. I wish you would state the cost of the box-cars in which ordinary dead freight is transported, also the cost of live stock cars—state which of them deteriorates faster, and which are the most expensive to maintain?

A. Well, the last contract we made we paid the same price for box-cars and for stock-cars, we paid $650. a piece for them. The average box-car will last about twenty to twenty-one years. The stock-
car about seventeen years.

302 Q. Now, the cost per year of maintaining it?

A. The cost per year of maintaining, very few railway companies and we are of that number, can afford to keep enough statistics to determine just what it cost to repair each individual car. We have some fifty thousand freight cars. We cannot charge out each car by number every day in type what it costs to repair that particular car. We do know this, however, that it does cost about $35. per car on an average, and we also know that a stock-car requires and receives about double the attention that an ordinary car does that is engaged in carrying dead freight, and in my judgment will cost from $60. to $65. per annum. If you will permit me to qualify that some, I want to explain that. A stock car is always undergoing repairs. There is never a time when it stops at a terminal that it is not surrounded by car-repairers, and they are always tightening up nuts, putting in bolts, changing brake shoes, because they run at a high rate of speed and wears out the brake-shoes very rapidly, and very many other incidentals that are not peculiar to any other type of car. Therefore, I believe they cost that much more to maintain and repair than an ordinary dead freight car does, and a refrigerator car will cost on an equality with a stock-car, a car that carries dressed
beef and dressed product will probably cost just about as
303 much to maintain per annum as a stock-car. The first cost is considerable more. It will cost a thousand dollars instead of $650. that the stock car cost.

Q. Well, now, what is the estimate of the annual cost of repairs on the ordinary box-car?

A. $25. to $30, I should say.

Q. And on the live stock car?

A. I said $60 to $65.
Q. On the refrigerator cars the same?
A. About the same as the stock-cars.

A recess was then taken until two o'clock P. M., of the same day, September 19, 1905.

304 SEPTEMBER 19, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon WILLIAM A. GARDNER resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. State the aggregate amount paid by your company during the year ending June 30th, 1905, as rental for live stock cars?
A. About $18,000.00.
Q. What does it cost to load live cattle and live hogs per car and on whom does the expense of loading at local stations fall?
A. There is a prevailing opinion that it don't cost anything, but I don't agree with that. The stock shipper himself actually loads the cattle and the hogs, but he is always assisted more or less by the station employés and by the train employés.

If there is only one car of stock to load, it is generally placed at the chute with a pinch-bar by the railway employés, and the shipper uses the bedding which we provide at our expense. He puts them in the car or in the pen and then all hands generally turn in and
305 help load the stock. If there is more than one car to load, they scarcely ever load one car until after the locomotive arrives. Then it displaces the car that is loaded, and places the other cars that are to be loaded and the time of the locomotive and of the train men engaged with the train, and of such portion of the station man's time, as is required, such station men as are engaged in that service is certainly chargeable to the loading of the stock.

In these modern days, the station men don't work twenty four hours, and then cry for more work. They generally have an agreement with the railway company that ten hours or eleven hours a day is a day's work. If you keep them up in the evening or get them up early in the morning to make way bills for the stock shipments after their regular hours for stopping or before their hours to commence or for beginning their work, then you have to pay them penalty time, twenty five cents to fifty cents an hour.

I noticed somewhere in the testimony in this case that of Mr. Store, who at that time was Traffic Manager of the Great Western Railroad and is now one of the Traffic Directors of the Union Pacific System and a man whom I regard as authentic, where he said that he thought it cost the Great Western Road $3.00 a car for
306 loading a car at local stations.

I don't think it cost the Northwestern Road that much money because our density is considerably greater than the Great Western, but I should say that $2.00 a car would not be unreasonable. Please understand that we do not keep any fifteen cent or

twenty five or thirty cent record of any man's time, at each station or anything of that sort. I am giving you my conclusions from some twenty or twenty five years of experience and observation, in connection with loading stock.

Q. When live cattle and hogs arrive here at Chicago in less than train load quantities, are the cars of the train carried immediately to the stock yards or are they held until a full train load of cattle cars can be obtained?

A. When a train arrives in—When cattle arrive in train load lots, they are despatched directly upon their arrival. If they arrive say, in five or ten cars, that may be mixed in with an equal or greater number of deae freight; they are switched out immediately and taken to the stock yards. If two of those trains were to arrive within fifteen minutes of each other, in two or five car lots or ten car lots, they would be held perhaps, if we had time to do it, and sent in one train. Ordinarily we don't have much time to accomplish
307 that. We have got to move the stock directly to the yards in order to make the market.

Q. Are cars containing live cattle and hogs, started into the yards regardless of the number of cars offered or are they held until full train loads of cattle and hogs can be obtained?

A. Well, they are not started regardless of the number offered but they are frequently started in very small trains. For instance, we would not have started a train from any place to run to Chicago with less than ten or twelve cars of stock in it. We would not do that except under compulsion. On the Branch Lines where some seventy per cent. of the live stock originates in the state of Iowa on the Northwestern Road, we frequently have a train that will run from 15 to 60 miles with only eight cars of stock in it. When it gets down to the main line it is consolidated with another train that may have picked up 15 or 20 cars west of the Junction Point. It is a most difficult thing however to secure the full utility of the power in the movement of live stock for this reason. There will be say, out of Council Bluffs, or Dennison, or Woodbine, all of them good stock shipping points, a shipment of stock but they seldom will have more than five or six cars a piece to ship on a particular day. You cannot combine any dead freight with that stock train, you have got to send an engine and caboose over there and pick up the shipper's
308 stock and then go along seven or eight miles and pick up others, and so go along, and when you get through instead of having all that the engine can pull, that is 28 or 30 cars, you probably won't have more than 25 cars and that train is brought into Chicago intact, so that although the printed rating of locomotives on everybody's time card or rate-card, will indicate that they can pull 65 or 70 per cent. of the total capacity of the locomotive in live stock trains, they seldom are enabled to get that much on account of the difficulty in concentrating.

Q. Are any trains of live cattle and hogs run special in order to make the market, or are they always run upon a fixed schedule?

A. We have no schedule stock trains. Seven eighths of the movements are as special trains.

Q. Are there any other special expenses incident to the transportation of live cattle and hogs which are not incident to the transportation of the prepared products of cattle and hogs or the transportation of ordinary dead freight? If so, please specify them as fully as you can.

A. May I refer to some notes that I have got?

Q. Certainly.

A. The product is moved regularly. You may figure on so many cars every day from the same place, and it is ready every day with the same regularity that a passenger train is ready to depart from its terminal station. You know several hours in advance of its
309 departure precisely how many cars of dressed beef you are going to have.

That enables you to go around and collect enough other freight to make up the maximum tonnage for the train that is going to move with the dressed beef. The trains are run at a regular rate of speed.

The Northwestern Road is fortunate in that, perhaps, that it has a double track betwen Chicago and Omaha. We can start our trains out and schedule them out at so many miles an hour from Omaha to Chicago. We don't have to provide for meeting any train and we simply have to provide for passenger trains or stock trains passing the dressed beef train.

There is no difficulty about the supply of empties for loading dressed beef. The ordinary method is that just as many loaded refrigerator cars as the Northwestern Railroad may bring east, we return an equal number of empty cars west, that is, refrigerators. Should we fail in that, for one day or two or three days and the other roads do not fail, they simply take some cars, that have been hauled west by some other railroad and load them for the east bound movement over our road and that is ultimately balanced up because that other road may be at a disadvantage some other time when we are open.

With stock cars that is entirely different. There is no time
310 guarantee on dressed beef. With our schedule trains if we are two or three or four hours late, we probably get a letter admonishing us that if we are late again we will never get any more of the business, but ordinarily we continue to haul our proportion of the business. If a train of dressed beef is delayed by a wreck, or something of that sort, all you have to do is to see that the refrigeration is kept up. Ordinarily, the ice in the cars will last for ten or twelve hours without any additional icing. If the delay lasts longer than that you have got to get the cars back to the nearest ice-house.

The loading of dressed beef and these products, is generally confined to the main line of the railroad, or lines upon which you have a heavy traffic. It is not necessary to start a special engine and special crews to bring it down to the main line.

Upon the shipments on the Northwestern, for example, those shipments are made from Omaha, South Omaha, Sioux City, Des Moines, Marshalltown, Cedar Rapids and Cudahy. With the exception of Des Moines they are all on our direct through line, and the Des Moines line is a line that has 15 or 20 passenger trains a day

and six or eight freight trains a day so that it is considerably different from the average branch line.

311 That may not appeal to you as amounting to a very gresy deal but it does stand for considerable in the way of expense in the operation of a railway, becau-e it is very much easier to regulate your trains on main lines, than on branch lines, and it is not necessary to perform special service.

The claims for damages in the case of dressed beef and the product are confined almost solely to wrecks. That is where you break up a car and its contents. We handle considerable dressed beef and products up in the lumber company and we ship them in an ordinary box car and sometimes we do have to pay some claims on them, on account of the extreme hot weather when the product may be spoiled.

There are no particular terminal facilities required for the handling of dressed beef or its product. The Railway Company does not have to provide anything, they don't even have to provide the cars and while we pay a cent a mile on the refrigerator cars, the owner of the cars has to make all necessary renewals and that price is not only to cover his cost of repairs, but also his cost of renewals. It is true that refrigerator cars are iced en route and that might be taken as an equivalent to the feeding and watering of live stock, but we receive for ice on the Northwestern railroad $1.50 a ton, which only covers the expense connected with that, and there are

312 several months in the year when we do not ice at all.

It is only during the summer months that we ice and that is at the Mississippi River.

Now as to stock, that is a live freight, and there certainly is a great distinction between the transportation of anything that is alive and something that is dead. There is an indefinite movement of live stock as compared to the regularity of the movement of dressed beef and packing house products. It is dependent in great part upon the market conditions at the various purchasing or packing plants.

It is not an unusual thing for us to receive an order Friday from localities in Iowa, several orders that combined will want 100 stock cars to load on Saturday night or Sunday. We move those hundred stock cars into that territory Saturday. The shippers will get a telegram from their Chicago man wiring them that the market has gone down, and the stock don't move for twenty four or forty eight hours so that our locomotives instead of bringing back loads have got to come back to the freight terminal without them, and then when the stock is ready to move, we have got to harness up again, and go up there with the same engine and crew and bring a load back. That makes a double movement of the engine in order to get the stock.

313 It moves in irregular quantities, notwithstanding the condition of the market. Sometimes they will have a rain, heavy rain, making the roads impassable in the country, and where a man expected to have a five car shipment out, he will only have a one or two car shipment out.

Again, they will change their minds, and order five cars, and

then want ten cars to ship and then we will have to make the run of forty or fifty miles with the extra fi*g*e cars at the additional expense so as to cover the shipment.

When we are handling 1500 cars a week, half of which is loaded on Sunday, that portion arrives on Monday morning in Chicago. The average train is picked up at ten or twelve different places, which increases the rate of speed between stations, and in addition to that, it makes Sunday one of the busiest days in the week.

Now the wage scale, of train men and engine men is just the same on Sunday as on any other day, just the same as the rates of freight are the same on Sunday for freight and passengers as they ar- on any other day but the large movement of live stock on Sunday compels the railways to keep on hand and under *a*pay a large number of men to water the stock and particularly the hogs at various points along the road, to repair the cars, and inspect the cars and on ordinary week days those men where there are no stock
314 trains running or passing through, they are provided with their employment in connection with the various shops. The shops, on Sunday, however, do not run and there is practically nothing that you can put this large force at except the inspection of cars and the probabilities are that, while the railroad pays fo*f* full time on Sunday, it only gets about half time in labor from its employés.

You have to clean the stock car every trip and it costs from fifty cents to $2.00 a car to do that. We can contract in the summer months sometime- for thirty five cents a car but you can scarcely ever make a contract in the winter months because it mostly all the time requires a locomotive with a steam hose attached to get the manure out of the car, because it is frozen solid. Very frequently to a depth of eighteen inches or two feet that is the case.

You cannot clean stock cars here in Chicago; you have got to haul them out to outside place. We haul ours to the Mississippi river at Clinton. We bought a couple of farms there so as to have a place where we could take the stock cars away from the main line and clean them up. We used to do it here in Chicago, but they passed ordinances which we were very glad to comply with because it was a nuisance.

Q. How far is it from Chicago to the Mississippi river?
315 A. 138 miles to Clinton. We filled up one far-, and had to go onto the other; we had one farm east of the river, and now we are using a farm on the other side.

We carry a great many stock men in stock trains. We have to use for them east of the Mississippi river peculiarly and particularly constructed caboose cars. The ordinary caboose car on the No. ..western road costs about eleven hundred or twelve hundred dollars. This so-called drovers' car costs us $1600.00 and the paraphernalia to put into it, this drovers' stock car, costs forty or fifty dollars, and it probably costs that much every year to maintain it.

In equipping those cars we put in sleeping arrangements that are not very much inferior to what is known as the tourists' sleeping car. We provide blankets and Mattresses and pillows and all such as that.

I think our cars sleep sixteen people. We have sixty of those cars that cost, as I said, $1600.00 a piece or $100,000.00. We only*se* use them east of the Mississippi river because all our stock trains arrive at the Mississippi river at a reasonable hour for a man to go to bed. You have got to get in there by midnight or else you won't make the market.

We have got an accurate reco*t*d of the people that we have kept from time to time, who travel on our stock trains. We never kept
t-ose rec-rds for a year but we have got them for thirty days
316 in succession, and I think once we kept them for sixty days
in succession. We will average two men for every five cars of stock, and I can recollect several Monday mornings last winter when we brought into Chicago more passengers on our stock trains than we did on al- of our pas-enger trains that come in here from west of the Mississippi ri*g*er. If you take a run of 800 cars of stock, which is not an unusual thing, it would be 250 or 260 people, and that i- more than our four or five passenger trains will have in the aggregate from west of the river.

It should be borne in mind that those are not all shippers or owners of live stock either.

In case of a wash-out or a wreck, you cannot let your live stock stand still. You have got to get it somewhere in the interests of ordinary humanity where you can unload it and feed it and water it. Even if you have got it in feed and water cars, you have got to get it to some point where you can put water in the water-trough and if they have exhausted the feed racks, you have got to replenish them and then if they have to stand around from eight to ten hours, you have got to unload the stock.

During the winter months we are very frequently obliged
317 to put two locomotives on one train of stock in severe
weather. The stock man very naturally objects to having their shipments cut in two or separating one man's shipment and putting it into a different *frame*. You take January and February, particularly on a Monday morning, and we will double head a very large number of live stock trains and in addition to that we will have from one to two of what we term "relief engines" standing along every thirty or forty miles, so that, in case the cold weather or something else gets the best of our engines we can replace the engine in bad weather by one of those in good order so as to make our time.

You must understand that these stock trains move in a procession. They are generally a block apart, that is, from three to five miles apart, and there is from 20 to 25 of them. If one of them stops in there, it is suicide to the rest of them, so we have got to keep the procession moving without any delay at all.

The protection to be thrown around a stock train is very much greater than those which are required for an ordinary freight train. They run at a much higher rate of speed and a great deal more risk is connected with the movement and we have got to be very much more careful. In a great many respects it is more exhausting for the engineer and fireman to pull a stock train than it is any other

type of what is called a "freight train" and for that reason
318 our engine men when they come in on our stock trains, while they do not decline because that would be in subordination,—we do not compel them to take their trains to the yards. We always relieve the crews that bring the stock trains into Chicago. We replace them — either a fresh engine and a fresh crew for which we are obliged to pay time and a half from our terminal here to go down to the stock yards. That is, if it takes a man five hours to make the trip we have to pay him seven hours and a half. That is not true of dressed beef.

Empty stock cars west bound have to move at relatively the same rate of speed as the loads do east bound. Of course, you can get around that by buying more stock cars, but the capital account invested would run against you to a greater extent than it does to move these empty cars at the increased rate of speed, bearing in mind that the stock business is not regular, but on the contrary very irregular.

Now we have special terminals but that has already been mentioned here, I think; feed yards, we have some five or six yards along, one at Clinton, one at La Fox and one at Belvidere, and others. That is necessitated by the twenty eight hour law in part and in part by custom. We have grandfathers, and fathers and sons that want to ship their stocks to be unloaded and fed at some feed yard. They have done it in that way all of their lives
319 and they continue to do it, but that is a very small percentage of the stock that moves however.

If you will notice, and this is a very important point, I think, if you will take those so-called granger group of railroads that handle the greatest live stock tonnage west of Chicago, the number of tons of revenue freight that they pull per freight train is very much less than any other group of railroads, and I have not any doubt about the fact that is due to the fact that they perform so much emergency service in connection with their live stock.

I know I would guarantee to increase the revenue freight of the Northwestern from 25 per cent. to 40 per cent. if we could eliminate the live stock from it, and I have no doubt other operating men could do better than that. It is a fact if you take the Burlington, The Northwestern, the Milwaukee and all the rest of them you will find that their train tonnage is very much less than it is in the East or possibly in the South and the train tonnage is the yard stock of railway profit. The less mileage you have and the more tons you pull, the greater your net income is.

There is no one commodity of traffic in connection with the Railway business in proportion to its tonnage that takes so much time of the executive or administrative departments as the live stock
320 business does. On the Northwestern Railroad, for instance, the Superintendent and Assistant Superintendent and the Train Master and Train Despatcher and his assistant and the Master Mechanic and all the rest of them never think of going to bed when a stock run is on. They are up all day and up all night, and when they are not doing that they are planning what they are going to do the next time they have a stock run.

In comparison with the live stock tonnage and the dead freight tonnage, I should say there was five times as much attention given to the live stock end of it, as there is to any other one commodity, on the divisions that carry live stock. I think I have exhausted myself on that subject.

Mr. LYNDE: How about the return transportation?

A. We return all these people to an average distance, as far as we can get at it, the distance which we haul the stock men is about eight hundred or nine hundred miles, and it costs us about $3. and $3.25 per car on the live stock that comes in here, figuring it at two cents a mile, for the stock men that we haul free.

Mr. LYNDE: Returning, they ride on first class trains, don't they?

A. Yes. That rate is a less rate than a first class rate but it is the same rate that you could buy a thousand mile ticket for,
321 with your return. Of course, they occupy sleeping cars.

Mr. BAXTER:

Q. Is the cost of cleaning the live stock cars borne by the company?

A. Exclusively by the company.

Q. And your estimate is that that cost how much?

A. Thirty five cents to $2.00. Probably the average price would be $1.25.

Q. The cost of the bedding, who bears that?

A. The railway company provides the bedding.

Q. What do you mean by "bedding"?

A. Well, it is sand and gravel, that is what I refer to, and it has to be loaded at the sand pit or the gravel pit and has to be hauled to the various stock yards and then it is unloaded into the bins, of which I said we had five hundred or six hundred, this morning. I suppose if competition is very strong, some of the company employés have to help shovel the stuff out of the bin and into the stock car although to each other we deny that.

Q. What do you estimate that to cost?

A. Well, I should say $1.00 a car would not be an extravagant cost. That stuff sells in Chicago for $2.00 or $2.50 a yard, the same kind of material that we use.

Q. In arriving at that cost of $1.00 or $1.50 per car for bedding, you charge up against it the freight?

322 A. Oh, no. I said $1.00 a car. We don't charge up any freight.

Q. Then you haul it from the sand pit to the sand bin free of charge?

A. Yes, sometimes that is only ten miles and some times it will be fifty.

Q. Are any of your live stock cars required to be disinfected, and if so, what does that cost?

A. Very frequently, particularly at this time in Nebraska and Dakota, owing to the quarantine laws. That is liable to cost from 5 cents to $1.50 *cents* per car. Just at this particular juncture, we are in the position where if we do take the stock the government

threatens to fine us, and if we do not take it, the shipper wires us that it is ours, he has turned it over to us and that is all there is to it.

Q. At those times when your live stock movement is heaviest does the extra speed have any effect as to injuring your live stock cars and requiring more extensive repairs on them?

A. I beg pardon?

Q. When your live stock movement is at the heaviest, you have to move your cars more rapidly?

A. Yes, sir.

Q. Now, I say, does that add anything to the expense?

A. Yes, sir, that adds to the expense of repairs as I said
323 this morning, and that is one of the items that leads me to believe that the repairs on a live stock car cost twice as much as on other cars.

Q. During the year ending June 30th, 1905, what were the live cattle and hogs earning per t-ain mile on your road?

A. Wel-, I don't think I can reply to that qu-stion, not intelligently, anyway.

Q. You could not gi*g*e me the average earnings per tr*a*in mile on that product?

A. I could do this, I could take a car of live stock, if you want, from a Missouri River point or a point in the Missouri River zone, and tell you what it earned to Chicago.

Q. As a matter of fact you have not figured it out?

A. No, but I can take a car of products and do the same thing.

Q. Can you give me the average earnings from all freight per train mile?

A. Yes, I think it was 2.19.

Q. During the five years ending June 30th, 1905, has the number of cattle and hogs moved over your road increased or decreased?

A. For the five year period it has increased very materially, but I should like to qualify that by saying that during that period the Rock Island Railroad bought the B. C. R. R. & M. Railway, which formerly gave us ten or twelve thousand carloads of stock a year, and we lost all of that, but notwithstanding that loss I think our receipts deliver-es at the stock yards are about equal to what they used
324 to be when we had that stock so that to-day on our own line, the stock movement has very materially increased.

Q. What was the size and capacity in tonnage of your live stock cars in 1888 and what is the size an- capacity of your present live stock cars?

A. Well, I don't think we have any stock cars left now from 1888. Probably at that time the maximum was a 31 foot car with a 20 ton capacity. Now, it is a 36 foot car with a 30 ton capacity.

Q. How many live stock cars did your company have in 1888 and how many has it at present?

A. Well, they probably had 1800 to 2,000 in 1888 and we have 5,000 now. I may not be reliable about that former statement as to what they had in 1888, that is a surmise.

Q. From your experience can you tell us how the cost of the transportation of live cattle and live hogs, all conditions considered, com-

pares with the cost of the transportation of the dressed and prepared product of cattle and hogs? Is it greater or less and about what per cent.?

A. I should place the live stock at 100 and the products at about 70.

Q. Where would you place ordinary dead freight?

A. About 50.

The COURT: That is the cost, if I understand your question.

325 Mr. BAXTER: That is the cost.

The COURT: The comparative cost?

A. Yes sir.

Mr. BAXTER:

Q. When you have demands upon you for cars out at your local stations, ar- the shipper- at all times rea-y to load when your cars are placed there?

A. Not all times. Do you mean to load on the day that the car is placed there or load directly when it is placed there?

Q. Load directly?

A. If the stock is in the yard, they are generally ready to load immediately, but it very frequently happens, as I explained, that the stock ca-s will be there, and then, owing to some fall in the market or not being able to get the stock down, not being ready with the shipments, they do not load promptly and the cars will remain there another day.

Q. Are demands frequently made upon your company for an unusually large number of cars for the movement of live stock at points largely scattered?

A. Yes, that happens very frequently indeed. We w-ll get an order from some division in northwestern Iowa, that he wants 200 stock cars the next day, and the division will cover a radius of 300 miles perhaps but we are organized, of course to meet those

326 demands, and we do meet them. It costs money to do it but we do it.

Q. What is your estimate as to the difference in cost between handling a through train of live stock from a Missouri river point to Chicago and the cost of handling another train load of live stock which you have to pick up car by car at stations scattered along the line of your road between the Missouri river and Chicago?

A. You mean a full train out of the Missouri river?

Q. Yes.

A. It costs twice as much probably to pick up the intermediate train, because the intermediate cars would have to be distributed one, two, three or five at a time in the face of the traffic going in the opposite direction. It would be subject to very serious delays in the way of setting those cars out and spotting them at the stock chutes, it would take a long time to do it. You would be subjected to the same delays to your loaded train when it came along to pick them up and all those things you would escape with a train carrying a full tonnage of stock cars from the river, a train coming out of there

fully loaded. There would be a very great difference in the two movements.

Q. What is the difference between the cost of handling the dressed product of cattle or hogs in through train loads from St. Paul
327 and Missouri river points directly through to Chicago and the cost of picking up live cattle and hogs at way stations between St. Paul and the Missouri river and Chicago? My other question was merely the difference between bringing a full train of live stock from the Missouri river to Chicago and picking up a train of live stock en route. My present question is what is the difference of the cost between bringing a full train load of packing house products from the Missouri river to Chicago and picking up a train load of live stock at intermediate stations?

A. Well, I think about twice a- much, probably.

Q. Are there any packing houses located at stations on your road between St. Paul and the Missouri rived points on the one hand and Chicago on the other? If so, give the names of such stations at which packing house- are located?

A. There is a packing house at Cedar Rapids, one at Marshalltown and one at Des Moines, but they are not very large affa-rs. I think the one at Marshalltown and Des Moines gave us 250 carloads of freight last year, and the one at Cedar Rapids gave us in the neighborhood of 800.

Q. That would make an aggregate of——

A. About 1300 cars altogether from the three places.

Q. State whether the live cattle and hogs which are transported from St. Joseph and Missouri river points on your road to
328 Chicago are transported in through trains and state whether live cattle and hogs are transported from intermediate points in through train or only in car loads picked up at various stations?

A. Well, we seldom, if ever have a through train of live stock from St. Paul to Chicago or from Omaha to Chicago or South Omaha. We do have some trains of range stock from the Minnesota transfer at the Union Stock Yards, but the Northwestern road is a very small factor in that movement. I think we had some four or five thousand carloads of range stock from the Missouri river, not via South Omaha but via Blair, through from the Black Hill ranges into Chicago. That was transported in solid train loads by itself. We very seldom have a full train from any intermediate point. I don't suppose that will happen half a dozen times a year. They are generally picked up at from five to ten points.

Q. You spoke of your road furnishing free transportation to persons in charge of live cattle and hogs and you stated you thought it amounted to a certain amount per car. Can you state for the fiscal year ending June 30th, 1905 what that transportation amounted to in the aggregate?

A. Well, I have to estimate, as I have said. We don't keep that record every day but according to our estimate, (and we tried to be conservative about it) it would be about $200,000.

329 Q. $200,000 per annum.

A. Yes sir.

Q. I believe none of the roads furnished transportation to anybody in charge of packing house products or dressed meats?

A. Not to my knowledge.

Q. Have you prepared a statement giving the names of all the stations on that portion of your road which lies between St. Paul or the Missouri river points on the one hand and Chicago on the other, at which stock yards or stock pens are located, showing the cost of constructing such stock yards or pens, and the annual cost of the maintenance of them?

A. Yes, I can give you such a statement.

Q. Well, will you file it as Exhibit "A" to your testimony?

A. Yes. That is only between St. Paul and Chicago, the Missouri river and Chicago.

Q. I believe I asked you the average annual cost of keeping live stock cars in repair.

A. Yes, I said, $25.00 to $30.00 and $60.00 to $65.00. I testified this morning to the total number of stock yards on the Northwestern railroad. Now you want the statement between the Missouri river and between St. Paul and Chicago?

Q. Yes. It will, of course, be less than the other.

Mr. LYNDE:

Q. You also want that statement to include the branch lines in Iowa?

Mr. BAXTER: Yes.

* * * * * * *

329a *Statement of Cost of Stock Yards and Tracks and Cost of Maintaining Same Between St. Paul and Missouri River, on One Hand, and Chicago, on the Other.*

Division.	No. yards.	Cost of yards and facilities.	Cost of exclusive stock yard tracks.	Total cost.	Average cost per year operating and maintaining.
Wisconsin.....	43	$19,110.00	$11,400.00	$30,510.00	$1,222.00
Galena	75	84,060.00	19,800.00	103,860.00	2,670.00
Iowa.	99	119,820.00	26,700.00	146,520.00	9,680.00
Iowa & Minn...	48	65,956.00	12,100.00	78,056.00	2,162.00
Northern Iowa..	61	54,050.00	16,100.00	70,150.00	3,922.00
Sioux City	59	51,795.00	15,200.00	66,995.00	3,470.00
Madison	77	26,701.00	20,100.00	46,801.00	3,160.00
Minnesota.. ...	78	48,060.00	20,620.00	68,680.00	6,376.00
C.,St.P., M. & O.	97	25,657.00	25,800.00	51,457.00	5,264.00
Total.	637	$495,209.00	$167,820.00	$663,029.00	$37,926.00

330 The WITNESS: That will include some stock yards on the Omaha road, the Chicago, St. Paul, Minneapolis & Omaha road, which I can give you.

Q. That lies between the Missouri river, St. Paul and Chicago?

A. Yes sir.

Q. Your road extend- across the Missouri river, don't it?
A. Yes sir.
Q. What is your western terminal?
A. Casper, Wyoming, and Bellefourche, in the Black Hills.
Q. What other roads go into Omaha from the East, the Illinois Central?
A. The Burlington, The Milwaukee, the Rock Island, the Great Western, and the Illinois Central.
Q. Do all of those roads cross the Missouri river and go beyond it?
A. The Burlington does, and the Rock Island does.
Q. The Illinois Central does not?
A. No sir.
Q. Does not the Chicago & Great Western cross the Missouri river?
A. Yes sir.
Q. Or it is confined to this side?
A. Well, I believe they have got a freight terminal in Omaha, so they do cross the river, yes, but it don't extend into Nebraska.
Q. And the same is true with reference to the general railroad station, some of the lines that leave Chicago go beyond the
331 Missouri river, and some of them do not?
A. Yes sir.
Q. Now those lines which extend beyond the Missouri River, they engage in the transportation of live stock from the South and West and Northwest to the river, and on to Chicago, do they not?
A. They do.
Q. And those that are limited to the Missouri river, they don't go beyond that, of course, and don't gather up any stock west of the river?
A. No.

Mr. LYNDE:

Q. If I understand you correctly, you state that the cost of handling a train load of the product of dressed beef is greater than the cost of handling a train load of live stock?
A. You don't understand me correctly at all.
Q. Is that your opinion?
A. Why, no sir, the cost of handling the live stock is very much greater.
Q. I got it just the other way around. That applies to a through train load from the Missouri river to Chicago, does it not?
A. Yes sir.
Q. So that, comparing the cost of handling a train load of the dressed beef or the packing house product with a train load through from the river of live stock, if I understand you correctly,
332 there would be the greater cost on the handling of the train load of live stock.
A. Certainly. You take a car of dressed beef and its products from Omaha to Chicago, going to some connecting line and all you have against you is the $2.00 terminal charge at Chicago and $3.00 at Omaha and $10.00 mileage. On the stock car you have got the cost of cleaning it up, and disinfecting it and you have got the ter-

minal charge at Omaha which you have to pay yourself and the terminal charge in Chicago for which you collect $2.00, but it costs you $3.50 so you are $1.50 out on that; you have got your damage and loss and your risk of transportation to the passengers on your stock train, etc.

Q. And all the incidentals incident to it?

A. And all the incidentals, so that a cost of live stock is considerably greater than the dressed beef product and notwithstanding the fact that the dressed beef product has more paying freight in a car than the car of live stock does. Of course, the latter tends to bring down the revenue of the car of live stock, the small quantity of revenue freight you charge on.

333 The COURT: That would be about 25 per cent. of the live stock, about a quarter more?

A. Yes, sir.

Cross-examination by Mr. COWAN:

Q. The figures you have given, Mr. Gardner, have reference to the Chicago & Northwestern Railway system?

A. That alone, Mr. Cowan.

Q. How much do you pay your engine men per mile, from Omaha to Chicago? What is the basis of your compensation to your engine men and firemen?

A. It depends on the type of locomotive. Do you mean the locomotive described in the business we have been discussing?

Q. Well, you can name the different wages with the different types of locomotives.

A. Well, we would pay the engine men on these live stock trains and dressed beef trains, which always had a large type of freight engine, I believe, $4.40, a hundred miles; we pay the firemen $2.75.

Q. That is 4.40 cents per mile?

A. Yes, sir.

Q. And the firemen how much?

A. 2.75, 27½ cents.

Q. What do you pay the train crew, conductor and brakemen?

A. The conductor, $3.45, two brakemen, $2.30 a piece, $4.60.

Q. That scale of wages applies wherever that type of en-
334 gine is used?

A. Yes, sir.

Q. Now, how do you gauge the scale that you pay them by the class of engine? What do you call the engine that draws these wages?

A. These engines weigh 130,000 pounds on the drivers, that approximately.

Q. Now, what other engines have you, and what other scale of wages for them?

A. Well, we have four dollar a day engines, $3.90 and $3.80, and they run down comparatively with that rate of drivers.

Q. Do you use this type of engine that draws the higher wage scale in the pick-up trains that you run of live stock from Iowa to Chicago?

A. We do, exclusively, yes, sir.

Q. And you use that type of engine exclusively with the packing house products and dressed beef products?

A. We do, and with the dead freight as well.

Q. What proportion of your total freight tonnage on these lines from the Missouri River to Chicago is handled by that class of engines?

A. On the main lines?

Q. Yes.

A. All of it.

Q. Those lighter engines are only used on the branch lines?

A. That is all, and they are used in Minnesota and Dakota on the main line.

Q. So that substantially all main line traffic is paid for on
335 the basis of this class of engine?

A. Yes, sir.

Q. Do you recall, Mr. Gardner, what the total expense is as stated in your annual report for the engine service and repairs on your line of road?

A. Yes, I can give it to you exactly for the last twelve months.

Q. I mean per locomotive mile as made out in your annual report, is what I have reference to, you have it itemized?

A. Yes, I thought I had it here in my pocket, twelve millions of dollars.

Q. No, you misunderstood me.

A. No, I don't think I did.

Q. Well, maybe you have got the other figures. $12,000,000 was your total?

A. For 31,000,000 miles.

Q. Have you got a printed annual report?

A. Not for this year, it is not printed. I have got some proof sheets.

Mr. SEVERANCE: What was that question?

Mr. COWAN: The cost of locomotive mileage.

A. I know what you are thinking of. The thing you have there says it cost 20 or 25 cents a mile.

Q. For the average per mile.

A. That is a fact, so far as it goes, but it don't go far enough.

Q. Well, what are the items that go to make up the locomotive mileage expense?

A. Fuel, oil, waste, and the round-house repairs, the tools
336 and supplies, the labor and the men; I can give you that in detail if you would like it.

Q. What is that?

A. I can give you that in detail by amounts if you would like it.

Q. If you please, as it will be in the reports this year.

A. Fuel, five million and a half.

Q. Have you figured it out per mile?

A. I can divide by the total mileage, I know what it is.

Q. I know that would give it, I thought you had figured it out.

A. It would be about forty cents.

Mr. LYDNE: You have given the total mileage as 31,000,000?

The WITNESS: Yes, sir.

Q. Each of these items you can get at the amount by making the division?

A. Yes, sir.

Mr. COWAN:

Q. You can give the total items and it can be figured from them.

A. You would like the total?

Q. I say, you can give it.

A. Pardon me, I did not understand you.

Fuel, $5,500,000; Oil and waste, $166,000; Men, $3,343,000, that is the engineers and firemen; dispatchers and wipers and round-house men, $760,000; tools and supplies, $84,000; Materials, $700,000; Labor, $1,400,000; that aggregates, approximately, $12,000,000.

Now, these figures won't appear in this coming report, prob-
337 ably, because this includes some things that the Interstate Commerce Commission does not require I think in the annual report.

Q. This is the printed annual I am talking about?

A. Yes.

Q. What was the amount in the year 1904 in your printed annual report of the cost of locomotive mileage per mile, can you recall it?

A. No, I do not; possibly you have got it right there, the 1904 report, somewhere between 20 and 25 cents.

Q. 1902, in your printed annual report shows it in your items of repairs and supplies for engines and tenders per mile, engineers, firemen, wipers, cost of oil, waste and tallow per mile, cost of fuel per mile, total cost per mile run by engines, and the last figure is 20.48 cents per engine mile?

A. Yes, sir.

Q. Now, what do your figures embrace which is not embraced in these figures?

A. Well, I can tell you if you will let me see those a minute, possibly. (Examines papers.) I should say that the difference was that that omitted the material that went into the cost of supplies.

Q. For the year 1904 your annual report shows the estimated cost, or rather the exact cost per engine mile run for those different items, does it not?

338 A. Yes, sir.

Q. Will you bring down a copy of your printed annual report tomorrow?

A. For 1905?

Q. For 1904?

A. Yes, sir. I will be glad to do that.

Q. You haven't it for 1905 yet?

A. No.

Q. Do you recollect what the total operating expenses of the Northwestern system was for the year ending June 30, 1905, per train mile?

A. No, sir, I have never figured that out.

Q. Your annual report for 1904 will show what it was for that year?

A. Yes, you can take the aggregate operating expenses, of course a railroad has only one thing to sell, that is transportation, all the expense is train mile expense; it is not fair to take half of the expense for any one thing and say that is incidental to train mileage, it is all incidental.

Q. Your average operating expenses per train mile will probably not exceed somewhere around a dollar twenty, will it, Mr. Gardner?

A. Well, it will run from that to a dollar thirty, I presume, that is, you determine that by taking the gross earnings and dividing, or the gross expense and dividing by the mileage.

Q. The total train mileage?

A. Yes, sir.

Q. With the exception of fuel and the expense of station
339 service, are there any additional expenses for conducting the transportation of any considerable amount than the items which you have mentioned? You have given the wages of train crews and outside of that the fuel, station and telegraph service is the principal expense for conducting transportation, is it not?

A. No, I should not say so. The maintenance of way is a very heavy expense, it costs the Northwestern Railroad a thousand dollars a mile.

Q. That is not for conducting transportation?

A. Why not, begging your pardon?

Q. Well, the accounts are divided into maintenance of way and structures, and maintenance of equipment, and so forth?

A. It is all chargeable to transportation. We only have one thing on a railroad to sell. I don't care what you spend your money for, it is chargeable against that one thing in my judgment.

Q. You misunderstand me. I am talking about the items of expense used in the annual report. You have one item of conducting transportation.

A. Yes, sir, it is divided there.

Q. The maintenance of way and structures is an item of expense that is light for the whole business transported over the road, and you divide that up upon the basis of train mileage. Suppose
340 you begin to pick up a train load of cattle or hogs this side of the Missouri River, where would you begin to pick that up coming to Chicago?

A. Probably at Missouri Valley, which is some twenty-two or twenty-three miles out, they ship from there to Chicago.

Q. And how far do you come before you fill up your trains?

A. Oh, we probably come fifty or sixty miles, of course that varies, Mr. Cowan; one day it would be forty miles and the next day a hundred.

Q. Where is the next division point?

A. Boone, 150 miles.

Q. By the time you get to Boone, would you have a full train?

A. Oh, yes, we would have a full train there.

Q. If not of live stock of enough of something else to make it up?

A. No, of live stock and nothing else. The ordinary stock shipper in Western Iowa or any other place won't stand for putting dead freight in with live stock; that is a custom that probably we are to blame for but it is there nevertheless.

Q. Where does your crew start from that picks up that train?

A. That picks it up from Missouri Valley? Well, sometimes they start from Council Bluffs, that is the division terminal point,—Council Bluffs to Boone. In a season when empty box cars are
341 moving to Nebraska to bring grain down, then we can accommodate the stock trains or the live stock at Missouri Valley and east of there by turning around a man who is taking empty box cars to Missouri Valley to go into Nebraska.

Q. Well, assuming that they start from Council Bluffs, that is the longest distance point?

A. That would be the longest distance, yes.

Q. Now, these crews start out with the caboose and the engine, do they?

A. Ordinarily, yes, sir.

Q. And you pay them on a mileage basis?

A. We pay them on a mileage basis, yes, sir.

Q. It does not take as much fuel to haul that empty train, or we might say the light train, without a load, as it does if it were loaded?

A. That is dependent entirely on the rate of speed, of course it would not take as much fuel to haul a caboose car as it would ten cars of freight, no.

Q. The fuel expended produces the power as a general proposition?

A. Makes the speed, yes.

Q. Now, they make that run through to Boone in what length of time in picking up this train?

A. Well, they make that run through to Boone in all sorts of length of time.

Q. You have an idea about what the average time is?

342 A. Oh, yes, they will average—probably they will be going that 150 miles not to exceed eight hours, and five of those eight hours, or four to five of those eight hours, they will actually be running, the remainder of the eight hours will be standing still waiting to load stock and pick it up and assemble it in their train.

Q. Now, that crew receives pay on the basis of that 150 miles?

A. They do; and we have to pay them just as much for that eight hours' work as we would if they worked fifteen hours.

Q. Exactly. Now, what is the length of time which must elapse on that division before you pay those crews overtime?

A. Well, when it goes on an average of more than ten miles an hour. If they were 16 hours making the 150-mile run, or 15 hours and 35 minutes, we would commence paying them over-time.

Q. As a rule it is expected that that business will be done within the regular time limit so there will be no over-time?

A. Ordinarily, yes, sir.

Q. And it is your effort, and you require it of your crews, to try to do that in order to make it less expensive?

A. Yes, sir.

Q. How many cars of live stock would you consider a train
343 at Boone that you should have picked up and bring on to Chicago?

A. Practically 25, we could haul 30 if we could get them.

Q. Assuming it on the basis of 25, now what is the rate of freight from Boone to Chicago?

A. From Boone to Chicago?

Q. Yes.

A. This freight you said came from west of Boone.

Q. I understand.

A. There the rate is 23½ cents. But what I don't know about rates is going to fill a large volume.

Q. You know enough for the purposes of this question.

A. Well, it is 23½.

Q. That train will be a train which takes a 23½ cent rate?

A. Yes.

Q. Now, Mr. Gardner, what do you consider to be fair, without magnifying or minimizing, what do you consider to be a fair estimate of cost to your company per car, aside from what you paid this crew, now, on that trip to Boone for the loading of those cars with the live stock?

A. Well, I have stated two dollars I thought would be a reasonable charge.

Q. Well, I thought that was mighty high.

A. Well, as I have said, there is testimony to the effect that it was three dollars.

344 Q. Well, now, who testified to that?

A. Mr. Storr, if I read right.

Q. Mr. Stickney said it cost 25 cents to a dollar and a half, when you mentioned that Mr. Storr said three dollars I did not recollect it.

A. I read that in the testimony.

Q. Mr. Stickney says 25 cents to $1.50?

A. Yes, sir.

Q. And he is supposed to be a walking encyclopedia of all railroad knowledge in that country?

A. I don't aspire to that at all, neither am I an expert, but I do know what things cost, in a measure.

Q. Well, how do you make out, Mr. Gardner, that it costs $2.00 to load a car of live stock on that division?

A. On account of the very large number of stock yards that we have, and the very small number of stock shipments that are made from many of those yards.

Q. And in that $2.00, you mean to include the expense of owning and maintaining facilities for that purpose?

A. I certainly do, and the water and everything else.

Q. I have probably misunderstood you when I used the expression a while ago. I thought you meant the expenses aside from that.

Mr. SEVERANCE: Did Mr. Stickney include that in the answer? Did he make a separate answer for that?

Mr. COWAN: I could not recollect at this time.

345 The WITNESS: That does not include the bedding in my judgment, Mr. Cowan.

Q. I want to go to that point. You say that $2.00 a car, however,—you make that estimate on it,—but that includes all the facilities, the owning and maintenance of facilities?

A. It includes the facilities, the maintenance of the stock yards, and the time that the agent would put in, if it was at night, and the time of the train crew.

Q. Do you include the bedding in that also?

A. I do not.

Q. Don't you believe it could be fairly included and yet you would have it pretty high?

A. No, I do not. I think the time of the train crew would pretty nearly equal it, as I said.

Q. The train crew you pay for. I am saying, aside from that.

A. I say, a certain part of that time is chargeable to the car, in all equity.

Q. My question was the expense of loading those cars, aside from the payment of this train crew.

A. I did not so understand it.

Q. You misunderstood me. What I am trying to get at is the expense of loading those cars. We have already figured out that you have got to pay the train crew for the 150 miles, until it gets

346 to Boone. Now, how much do you figure it will cost you for actually loading the cars and for the maintenance of the facilities, not including any proportion of time for your train crew?

A. I should say $1.75.

Q. And of what does that consist?

A. That consists of the maintenance of yards, their depreciation, repairs, the station agent's help, all the time he puts in there, and consists of the maintenance of stock scale and the water plant.

Q. Now, in regard to the bedding. Is it a fact, or not, that you charge in some instances for the bedding furnished?

A. We do not charge for it, to my knowledge.

Q. I had understood it was charged for, in some instances. I didn't know any instances.

A. I believe there is some understanding between some of the roads to the effect that they will charge fifty cents, but I have yet to see the first bill made by the Northwestern road, or any other. I probably would not see it on any other.

Q. I didn't pretend to know, I just asked you. How much bedding, if you know, will it take for an average car?

A. Well, I don't suppose I can be accurate about that. I talked with our stock man three or four weeks ago about that. He said it would probably take two yards, distributed, on a car 36 feet long, eight feet wide,—that would not give a very thick bed to do that.

347 Q. And that bed consists of sand?

A. Sand and gravel or gravel, just whatever the pit may be that is in closest proximity to that stock yards.

Q. Is it not a fact that very frequently the cars are bedded with straw or hay by the shippers themselves?

A. Well, I cannot say that it is very frequently, but then you do find cars that after they put in this sand and gravel they put some hay on top of it.

Q. Now, Mr. Gardner, does it require, or do you know whether it requires in actual practice, a clean and rebedding of a car on every trip?

A. I know it requires a cleaning and bedding on every trip, absolutely.

Q. And you ship no stuff in here where the bedding is renewed?

A. Oh, I won't say we ship no stuff in here. For instance, suppose a car of stock is loaded at a local station in Iowa, and goes to some other local station, there is more or less of that all the while. It may get to the latter local station and that man will not re-bed the car, he may put in a little more on top of what is already in there without cleaning out the car, and ship stock to Chicago.

Q. There is one point you do know about yourself, and that is whether you carry any cars beyond the Mississippi River without stopping them there to clean?

A. We do not. I want to qualify that some. There might

348 be an occasion once a year, Mr. Cowan, or twice a year, where the thermometer was 30 or 40 below zero, and there was a train of stock cars slipped through without being cleaned, but you can go there, or anybody else, and see what we are doing to every stock car, every stock car is religiously switched to the stock car tracks and cleaned.

Q. In the trial of your terminal charge case, a claim was made by all the railroads with reference to the expense they were put to for cleaning cars.

A. Yes, sir.

Q. And my recollection is the record shows that they then stated the item as 25 cents per car?

Mr. SEVERANCE: I object to this statement, and move to strike it out.

Mr. COWAN: It is cross-examination; I am leading Mr. Gardner up to a question.

Mr. SEVERANCE: That is not a question.

The COURT: You have made a statement. Finish up your question on your statement.

Mr. COWAN:

Q. Among other roads that put in that statement was the Northwestern. Now, do you know whether when the cars were cleaned at Chicago, it cost more or less than 25 cents per car?

Mr. SEVERANCE: I make the same objection and motion.

349 The COURT: Let him answer.

A. I think it cost less at Chicago, because the bedding had less time in which to freeze and become solid.

Mr. COWAN:

Q. Ordinarily, what does it cost you per car on an average for cleaning expenses at the Mississippi River? You must know pretty closely to what that comes.

A. I do know, pretty closely. I will say a dollar and twenty-five cents, take the year round. You must bear in mind that our heaviest stock months are in the winter.

Q. How many cars do you clean at the Mississippi River?

A. Why, I presume last year we cleaned 45,000 or 50,000 there.

Q. Well, do you know what the total expense of that cleaning service was there? You could find that out, couldn't you?

A. I can find that out, yes.

Q. I wish you would ascertain, Mr. Gardner, definitely.

A. I can find that out with this exception, which very frequently occurs. When we have a very large stock run, we have to turn in all the section men in the country, and hire a whole lot of extra people to put in and clean cars. Now, we never have charged that section labor out to cleaning stock cars, it goes in as track labor.

We keep a certain gang of men there all the while to clean
350 cars, then we increase it or decrease it from other labor on the Road the same as in other cases of emergency and do not charge it out to that particular thing. I have no doubt I can give you a fairly comprehensive statement.

Q. Do you know what other roads pay for cleaning cars where they have a contract for cleaning cars?

A. I have no knowledge whatever. I doubt if very many have contracts.

Q. How many cars will a man clean?

A. Some days he will clean only one. A dollar and a half a day man. It has to be done during the daylight hours in the winter time.

Q. That would be an extraordinary case, wouldn't it?

A. I don't think it would in January and February, no sir.

Q. Do you think there is on your books a statement of the total cost of that plant for cleaning cars there, and the total number of cars cleaned?

A. I think I could give you the total cost, pay-roll and number of cars cleaned.

Q. In other words, if you were to get at the total cost, and total number of cars, you can do that?

A. Yes, sir.

Q. I wish you would do that, Mr. Gardner?

A. I will, with pleasure.

Q. See what it costs, whether it is greater or less than you had estimated. Now, these cattle that you bring from Boone,
351 following that car up, into Chicago, after you start out with that train, it is subject to all of the same advantages and disadvantages right on up to delivery into Chicago that a train is

that comes from the Missouri River, is it not—there is no substantial difference?

A. Well, it is subject—of the same kind of freight you mean?

Q. Yes.

A. Yes.

Q. And you pay the same amount for trackage here in Chicago to the Stock Yards Company and to the other companies over whose lines you reach the stock yards track?

A. Yes, sir.

Q. And the same for the men who carry the trains on from your junction point into the yard and all that?

A. Yes.

Q. A charge of two dollars per car as a terminal charge to the shipper in the same manner?

A. Yes, sir, we do.

Q. How much do you pay at South Omaha as a shipping charge for the delivery of packing product and dressed meat to your line?

A. Two dollars a car, I believe.

Q. How much do you pay. Do you pay that to the packer in addition to the rate?

A. No, I think the railroad absorbs that. I am not clear on that, but I think they do, they absorb most anything.

Q. Now, when you bring your packing house products to Chicago, unless they are delivered to some other railroad to be carried
352 around Chicago you have to deliver them to the Union Stock Yards tracks, do you not?

A. We deliver all of that stuff to the Chicago Junction Railway at Melrose Park and pay them three dollars a car to deliver.

Q. Three dollars a car, and you collect no part of that back?

A. No.

Q. Suppose that a train carried dressed meat and packing house products comes along at the same time, as they no doubt have very close to the same time to this train that is carrying live stock from Boone, Iowa, wherein lies the difference in the cost of performance of the service of hauling that train of dressed meats and packing house products to Chicago and hauling that train of cattle?

A. Well, the principal difference in cost would be the difference in the rate of speed of the two trains, the stock train will run considerably faster than the packing house product train, after it is picked.

Q. In what length of time do you usually perform the service from Boone, Iowa, to your junction point of the Stock Yards rails at Chicago?

A. We allow about two hours to get in. That is dependent entirely on the time the train of stock may leave Boone, and there is absolutely no regularity to that. On one train today it may
353 take us three or four hours to assemble the 25 cars of stock, to-morrow it may take six hours, to-day or next day it may take three hours to do it. And when we leave Boone we are going to get that train of stock in here as fast as we can to make the market the next morning. When I say "make the market," I do not mean

arrive at seven o'clock the next morning, I mean commence to arrive at midnight, because when we have 25 cars of stock——

Mr. LYNDE: Trains you mean of stock, you said 25 cars.

A. Yes, I beg pardon, 25 trains, we have got to run them ten minutes apart. 25 trains would make 250 minutes, which would be four hours and ten minutes between arrival of the first train and arrival of the last train and we have to run the first trains just as fast as we can run in order to get the trains in here to make the market. That don't apply to dressed beef in any manner whatsoever.

Q. Now, Mr. Gardner, the two dollars that you pay at Missouri River on the packing house products per car and the three dollars and a half, is it at Chicago?

A. Three dollars we pay the Chicago Junction Railway.

Q. Three dollars at Chicago?

A. Yes, sir.

Q. Which is not absorbed, constitutes the terminal expenses which you pay out on the packing house products and dressed meats per car, the terminal expenses on the live stock aside from the train crew cost, it would be $1.75 you last put it, as I understand?

354 A. Well, that was at an intermediate station. I thought you were discussing South Omaha now and Chicago.

Q. I am, but I am undertaking to compare the dressed meat and packing house products with this live stock train from Boone. When you got to Chicago you say you are out in expense of how much in delivery to the stock yards?

A. I think all the testimony here has been three dollars and a half per car. I think that was our statement a year ago, and we get two dollars for it, which makes a dollar and a half.

Q. So there are terminal expenses, of a difference of a dollar seventy-five in favor of the live stock train into Chicago?

A. That is correct, yes sir.

Q. Now, where do you bring the packing house product car to at Chicago to deliver it to the Junction Railroad?

A. It is a station on our main line out here called Melrose Park, it is about thirteen or fourteen miles, I think.

Q. Is that the station from which you estimate the expense in reaching the stock yards with the stock car?

A. With the stock-car no— we bring the stock cars in to Western Avenue, which is about eight miles this side of Melrose.

Q. The train crew——

A. If you will permit me, the engine and crew, which brings these refrigerators to Melrose, of course, covers the same distance

355 that the engine and crew do that bring the train of stock into Western Avenue. There is no difference between the mileage.

Q. I was just going to ask you that question.

A. There is no difference between the mileage on a dressed beef crew and a live stock crew.

Q. Now, your engine and crew starting from Council Bluffs then with packing house product and dressed beef trains coming to

Chicago cost you exactly as the engine and train crew that carries this train of live stock, which you pick up between Council Bluffs and Boone and bring on to Chicago?

A. Yes, the same rate of pay.

Q. The same rate exactly?

A. No difference in them.

Q. Now, wherein lies the difference in cost aside from the items we have just been discussing in the pulling, hauling of that train of dressed meat, and packing house products from Boone on to Chicago and hauling the live stock train on to Chicago?

A. Well, as I have said, that will depend upon the rate of speed. You might select a day and a train of dressed beef and a train of live stock and bring them along an hour apart and at the same rate of speed, the expense would be identical right straight along. Now, all of the dressed beef and packing house products that we move as I have stated before do move on a regular schedule, our rate of speed is the same day in and day out practically.

Q. And what time does that train leave Council Bluffs?

A. Two o'clock in the afternoon.

356 Q. Or does it leave South Omaha at that time?

A. No, Council Bluffs.

Q. Council Bluffs at two o'clock?

A. A. Yes sir.

Q. And reaches Chicago when?

A. 2:15 the next day.

Q. And what is the schedule of that train at Boone?

A. Oh, I think it is nine—well, I can't tell, somewhere around ten o'clock. I can't tell within fifteen minutes of it. The time card will show that if you want it practically.

Q. It is practically a 24 hour schedule?

A. Yes sir, about 24 miles an hour.

Q. It makes almost exactly twenty miles an hour. Now, does that train have to take a siding in order to let live trains pass it, if any overtake it?

A. If any should overtake it, it would take the siding, and the nearer it gets to the Missouri River the more the probability is that some stock trains passing it.

Q. Now, then, the stock-train would not have to stop, but that train would?

A. Yes sir, that train would have to stop.

Q. In order to make that twenty miles an hour spped, will not the train carrying dressed beef and packing house products between stations have to make faster speed than the stock train would to come in on time?

A. No, because the matter of delay in letting the stock train by it will only be a matter of about ten minutes, the blocks are

357 only about ten minutes apart, and the stock train might get in here several hours ahead of that train. The stock train would have to be here in the morning at seven o'clock, before that. I do not want to be misunderstood as testifying that that happens

every day. This is a supposititious question to me as I understand it, because the stock train arrives here at two o'clock in the afternoon—the dressed beef train I mean arrives at two o'clock in the afternoon. There would be very few occasions where a stock train would pass that particular dressed beef train. Now, the other dressed beef train arrives at 6:25 in the morning on the nights that — runs, it would not be an extraordinary occurrence for eight or ten stock tracins to pass it, because it comes along at a time when there are many stock trains in proximity, to it. The fastest dressed meat train does not run at a time when it is liable to be overtaken by very many stock trains.

Q. Do you claim your stock trains picked up that way and leaving Boone make a better average, including all the stops than twenty miles an hour on here to Chicago?

A. Yes, I claim that because——

Q. Are you certain they do that?

A. Am I certain they do that?

Q. Yes.

A. I used to be a train dispatcher out there.

Q. Now, when that stock train leaves Boone you have got a
358 certain number or extra number so and so that you run that train on?

A. Oh, we can identify them.

Q. You identify them right through?

A. Yes sir.

Q. So you do of dressed meat trains, that has got a number?

A. That has got a regular number on the schedule.

Q. Does all of the packing house products and dressed meat which comes out of Council Bluffs come through Boone?

A. Yes sir, and all that comes out of Sioux City over our line comes through Boone.

Q. Comes through Boone. Now, does all the live stock concentrate on your main line by the time it reaches Boone?

A. No.

Q. I mean live stock from west of the Missouri River?

A. The live stock from west of the Missouri River, and most of the live stock from Western Iowa, would concentrate when it got to Boone.

Q. Boone would be a representative station?

A. It is one of our freight terminals out there.

Q. Where is Clinton from Boone?

A. 200 miles.

Q. This side?

A. East.

Q. East of there. You made out for the use of the Commission, and at the request of counsel in the live stock case, Texas Cattle Raisers case against the various roads, a statement showing your trains out of Clinton?

A. Yes sir.

359 Q. And that showed live-stock cars in the train, that is, the loaded cars, and other loaded cars without designation, and

empties, I presume. I think that was the form of the question. You have a copy of that statement, have you?

A. I have, at the office.

Q. That was for the first 15 days of April, and the first 15 days of October, I believe?

A. I don't just recollect the months; it was 15 days three or four months apart.

Q. If you take 15 days, say, in April, and 15 days in October, would that be about representative of the movement?

A. It would, I should think, fairly so, yes, sir.

Q. You can make a statement that would show what time these trains left Boone and the time they arrived at Chicago, and show what the consist of each train was, that is, the total number of loaded cars of live stock, and the total number of loaded cars of dressed meat and packing house products, and the total number of other loaded cars, and the total number of empties?

A. Yes, sir.

Q. I wish you would make up a statement showing those facts, with respect to each and every train of all sorts moving eastward out of Boone toward Chicago for the months of—for 15 days, the first 15 days of April and October of 1904, if you think that would be representative.

A. I will.

360 Q. Now, would not that statement, Mr. Gardner, furnish definite information with respect to the matter of speed and to the consist of the train, the amount of loaded cars and empties that were hauled?

A. It would furnish definite information as to the definite number of cars in the train and the kind of freight they contained. It would be very misleading, indeed, as to any speed matter, because all it would show would be the time betwen two terminals, and that might only figure out 15 miles an hour, whereas the time between many stations between those two terminals might be 40 miles an hour. The only way to give that to you accurately would be to bring a train sheet in here.

Q. That would require an enormous amount of figuring to show?

A. It certainly would, but this would not be fair evidence as to the rate of speed, by any manner of means.

Q. If you desire to supplement that with a train sheet that shows the speed of trains over any given division, or the length of haul that the dispatcher is checking up with his sheet, of course you would be perfectly privileged to do that.

A. I will be fair as to the facts, if it does not express anything, whether it does or not, to our benefit or not, I will put down the facts, you may rely on that.

361 Q. Is it a fact or not that you haul more loaded cars in the trains which carried the live stock, or in the trains which carry the dressed meats and packing house products?

A. Well, I should say we hauled the most loaded cars in the trains that carry dressed beef and packing house products on an average.

Q. But this statement will show definitely how that is?

A. Yes, sir, that will show definitely.

Q. You said this morning that the live stock car weighs 18½ tons, including bedding and manure. Is it not a fact that at the weigh-master's office here at Chicago, all of those cars are weighed as they go out?

A. Weighed as they go out?

Q. Yes, sir.

A. Yes, we get the weights of those coming out after they are unloaded, and we get the weights of them going in.

Q. When they have still got manure in?

A. And that is where we got our information,—averaged that thing up.

Q. Did you take it definitely, take the total number of cars?

A. Yes, sir, we sent a man out there to do it.

Q. It showed them 18½ tons?

A. It is approximately correct. Of course you will find an occasional car that would be 17½, and find an occasional one about 19½.

Q. What is the weight of your present cars that you con-
362 tract for, you speak of contracting for stock cars?

A. We do not contract for a certain weight, you know, they vary.

Q. I know you don't. They have got a stenciled weight on.

A. 32,600, I think, is what is stenciled on them.

Q. And what is the weight of the refrigerator cars that are in use, the light weight, I am talking about?

A. I think 20 tons,—40,000 pounds.

Q. What is the capacity of the ice and salt box in weight in these refrigerator cars?

A. Well, I don't know as I can tell you that, I presume about four tons.

Q. Now, do you weigh those refrigerator cars as they come in and weigh them as they go out?

A. No.

Q. How do you get at the weights of the dressed meats and packing house products in the cars to charge freight on it?

A. That is checked in at the packing houses, and we have the advantage of that check and bill it in accordance. We have a man there.

Q. You accept their weight?

A. Yes, sir, on inspection, we test it every once in awhile.

Q. Do they load packing house products clandestinely in with dressed meat cars?

A. I don't know that I have ever personally discovered that, no.

Q. You have heard tell of it?

A. I have heard tell of it, the Western Weighing Association reports it sometimes.

363 Q. What proportion of dressed meat and packing house products come to Chicago over your line, comes on the 18½ cent rate, and what proportion on the 20-cent rate?

A. I can't tell you that. We are fifth in the lines that move that

stuff from the Missouri River. There are four other roads carry more of it than we do, ours is very small.

Q. Have you the figures as to how much you carried for the fiscal year ending June 30, 1905, of dressed meat?

A. I have at the office. It is somewhere between 3300 and 3500 cars from South Omaha.

Q. That is both products and dressed meats?

A. Yes, sir.

Q. In what proportion is the one to the other, is dressed meat in carloads and packing house products in carloads, in tonnage and carloads?

A. Those two, I think, are two thousand of products, and 1400 of dressed beef.

Q. But of the total shipments there is always a greater amount of dressed meat passing through the Mississippi gateways than the packing house product?

A. I believe so, yes, sir.

Q. Do you know any reason why it happens that your road gets a larger percentage of the product?

A. I don't know about that.

Q. Have you got any statement made up from definite figures which shows the actual average weight per car paid for packing house products, separate from the rate paid for dressed meat?

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A. Yes, sir, I think I have got that, if not, we can get it.

Q. Do you recall what it is?

A. Why, I think it averages about 11 tons and 13 tons; that is about the way it runs.

Q. You stated this morning what the average of both was together?

A. Yes, 12.2.

Q. Twelve and two-tenths?

A. Yes, and I think it runs in the relation of 12 to 13, a little fraction both sides.

Q. Do you know what the average weights of cattle are shipped from these interior Iowa points to Chicago for a 36-foot car?

A. Yes, sir, we run about 23,000 pounds.

Q. What place or office do you resort to to ascertain what those average weights are on cattle?

A. I have the auditor make up a statement, he makes it from the original way-bill that we collect freight on.

Q. Are you making your estimate of 23,000 pounds on something he made out for you or just as you understand it?

A. Well, a little of both. I had occastion to look that up in the 28-hour law that we discussed here awhile ago and found out that is about what it run, and then this statement we got from him verified that.

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Q. You have spoken of a great many circumstances surrounding the traffic of live stock and the traffic in dressed meat and packing house products bearing on the cost of service, you have mentioned the difficulties that occur, like the furnishing of

stock yards, other facilities, carrying of men on return passes, the loading of the live stock, services performed in that particular, bedding the cars and their cleaning and the like; is there any substantial difference now in those particulars to the conditions which had existed for ten or twelve years?

A. Well, there is one very great difference, that both material and labor had advanced very materially in the last ten or twelve years; we do a few more things now than we did ten or twelve years ago; and the same things we used to do then probably cost twice as much now as they did then.

Mr. LYNDE: Isn't the speed greater too, Mr. Gardner?

A. Oh, no, not a very great deal.

Mr. COWAN:

Q. Now, in what particular has the service performed, in the shipments of live stock changed, we will say, in eight or ten years?

A. Has the shipment changed?

Q. No, in what particulars has the service performed changed?

A. Well, the change is a great deal more of service and a great deal more of live stock which has necessitated expansion in
366 the facilities and so forth, and the increased pay of train men——

The COURT: The amount of service has increased more in the live stock business than it has in the dressed meat business, is that the idea?

A. Yes sir, because we always have handled a great deal more of live stock than we have of dressed beef.

The COURT: And you do more live stock business than you used to in shipping it, do more work on it, spend more money on it?

A. Yes sir, we do.

The COURT: That is what he is trying to get at, he wants to know what.

A. The live stock business has always been something that all the railroads in the West have solicited pretty generously and there is some new things done right straight along.

Mr. COWAN:

Q. Well, now it is the particulars of those things that shows wherein there is any difference now to what there was then, that I am inquiring about, what are those particulars?

A. Well, I can recollect ten or twelve years ago where we didn't have very many wagon scales at stock yards where the shipper weighed his stock on the town scale and he paid for himself. The
367 wagon scales were necessitated by the fact that some railroad, maybe it was ours, commenced paying the shipper a dolar a car on account of his weighing his stock. Directly every railroad had to put in wagon scales at their stock yards and so there is no more paying of a dollar a car. They instituted the wagon scale. At that same time the matter of water in stock yards was not nearly as common as it is to-day. If we happen to have a track tank around there they would lay a pipe to the stock yards and you had water in it,

and if you did not have any facility of that sort at the station you didn't have any water. A man didn't expect you would. He went to the town pump with his stock and they had a trough there to water them. Now if we had a station of any size it must be provided with a steam pump or a wind-mill or some auxiliary that will provide water. We did not have in those days very many shed-ed pens, it wasn't necessary. Now as stated this morning we have got two thousand pens that have got roofs on to protect the stock from the elements. It is changed in that respect. I do not know that fifteen years ago that I ever heard a railroad company provided anything for bedding for the stock cars. The shipper provided his own bedding if he had any, in a good many cases. Now it is the universal practice to provide bedding. The matter of carrying live stock men was not so popular ten or fifteen years ago as it is to-day, there were not so many men rode on the stock trains.

368 Q. Well, now are you quite certain that eight or ten years ago, I think I put my question eight or ten years, that eight or ten years ago, they did not just as frequently ride on stock trains as they do to-day?

A. The Northwestern road did not carry so many men.

Q. It did not carry so much stock?

A. We didn't carry so many men in proportion to the stock or car, we did not provide sleeping car cabooses in those days, it was not necessary. We did not have more than three or four men on a train. They could stretch out on the benches. We provide- these drovers cabooses because we were obliged to in order to accommodate the men. I have a pretty fair knowledge of that Mr. Cowan because I rode stock trains for several years of my life.

Q. Well, now speaking of the covered pens, where do you have those covered pens?

A. Well, we have got some eighteen hundred or two thousand pens—three-fourths of all our stock yards have those covered pens. It is due to competition. All the live stock west of the Missouri River is highly competitive, we have got no place out there we can call our own or anybody else.

Q. You mean east of the Missouri River?

A. Yes sir, between the Mississippi River and the Missouri River.

369 Q. Take it now, instead of eight or ten years ago, take it four years ago, in 1901, has there been any substantial difference between conditions existing then and conditions existing today?

A. Well, about that period, or possibly 1900, we started in making the extraordinary additions to stock yards.

Q. Whatever all of those things are, are embraced in the estimated cost of loading, which you figured at $1.75 a car?

A. Yes.

Q. In regard to the packing house products in dressed meat, your cost of labor and supplies and materials for the maintenance of your railway and the performance of the service of transportation, the cost of fuel and the like, has all advanced as much as applied to that traffic as it has as applied to the live stock traffic?

A. Yes, I think it is reasonable to apply it to that.

Q. The relation of the cost between packing house products and dressed meat, on the one hand, and live stock on the other, is substantially not different now to what it was four years ago, speaking of the relation?

A. No, it costs just as much to handle the packing house product now as it did then.

Q. I mean the relation between the two?

A. Yes, I understand your question. I should answer yes to it.

Q. Now, Mr. Gardner, there has been a constantly and rapidly increasing tonnage on your line of road, has there not, in
370 the last five years?

A. Yes, but it is not so wonderful as you might assume, as you will discover by our annual reports there; there has been a good many railways built into our territory in the last five years.

Q. There has been a large increase in your live stock traffic in this territory, has there not, on the Northwestern proper?

A. Yes, as I explained today, I think we have probably increased at the rate of 1000 cars a year for the last six or seven years on our own lines, although we are not carrying any more now in the aggregate than when we used to have the B. C. R. & N. stock.

Q. Now, your train tonnage, that is to say the amount of tonnage you haul in a train, the number of loaded cars has constantly increased from year to year, has it not?

A. Well, let us see. In 1896 I think I was made Assistant General Superintendent of our road. We were hauling about 196 tons to the train, and the report of this year, I think, will be 264 tons to the train.

Q. You have improved your road bed and your road-way during that time?

A. Very materially.

Q. You said to-day, as I understood it, that all of the live stock cars are returned empty?

A. Well, I said practically.

Q. You said you didn't think more than one per cent. went back?

A. Yes.

Q. Your car accountant keeps the statements or books,
371 rather showing the total stock car mileage; it shows that which is empty and that which is loaded?

A. Yes, sir.

Q. In connection with the other statement which you get up I wish you would get a statement showing correctly the total stock car mileage of the lines east of the river, if they keep it that way?

A. They don't keep it that way.

Q. Well, the best you can do then will be the total stock car mileage. And show what is empty and what is the loaded car mileage?

A. For what period do you want that, please?

Q. For the year ending June 30th, 1905, I suppose will be the nearest you can get it. What is the capacity of your 36 foot stock cars you have contracted for?

A. We have got then 30 tons, like lots of other cars.

Q. You said you paid out $18,000.00 for rentals of foreign cars?

A. Yes, foreign stock cars.

Q. For foreign stock cars?

A. That is on the per diem basis, 20 cents a day.

Q. Do you use or handle any of the Car Line Company cars now?

A. Of course we don't refuse business that comes to us in those cars, and that is where this $18,000.00 came in. We use our own cars exclusively in our own live stock business.

Q. Don't you pay the foreign car line company on the basis of six mills per mile?

A. We do those that request it, and the others per diem rates. I don't know that I can specify which roads get six mills and which get the per diem.

372 Q. What is the difference between the two methods of payment, which is the more expensive, to pay six mills per mile or 20 cent- per day?

A. The 20 cents per day basis is supposed to secure the prompt return of the car to its owner. With the six mills per mile you can let the car lay around on your line for months and not move it. The 20 cent- per days is probably a better return to the owner of the car than the charge per mile is to the owner.

Q. The effort in making the per diem basis instead of the per mile basis was not to change the amount of the cost but to secure more prompt return of the car?

A. More prompt return of the car to the owner.

Q. Have you in your accounts of the car movement statements showing what the per diem mileage is, the mileage per day of the stock cars and other cars on your line?

A. Yes, I can tell you that right now.

Q. How much do your stock cars average per day?

A. Fifty to fifty-five miles; box cars thirty miles; coal cars seventeen miles.

Q. What do refrigerator cars average?

A. When they are on our road they will average about the same as the stock cars.

Q. Is it not a fact that you have to return these refrigerator cars at practically the same speed that you bring them loaded?

373 A. Well, yes, in—I will say yes to that, but as I explained, there is not the emergency existing at the other end of the line of the empties; that is you don't lose the business if you don't get the empties there. We return them in solid train loads at the regular speed of 20 miles an hour.

Q. In the actual practice of returning both stock cars and refrigerator cars, do you take them in solid trains of empty cars or do you mix them up with all the traffic as it happens to move?

A. Well, we take them and aim to take them in solid trains of cars. We pull sixty empty stock cars West and pull about sixty empty refrigerators West. They are generally delivered to us, the refrigerators, in solid trains, and we take the stock cars as they come

from the stock yards, and double up what was two loaded trains and make one train of empties.

Q. And the refrigerators——

A. We receive generally in train load lots empty from the connecting line.

Q. Do you handle fifty cars, refrigerators?

A. Empties, 45 or 50, if there is not too much wind.

Q. In the case of this Boone shipment, if you had returned the 25 stock cars at Boone you would have to pay on the basis of 20 cents per day, or suppose them to be equivalent to six mills per mile?

A. We charged that out of the six mills per mile, our own cars.

Q. On the refrigerators returned empty you pay on the
374 basis of one cent per car per mile clear on to Council Bluffs?

A. We would.

Q. And you pay on the refrigerator on the basis of one cent a mile from Council Bluffs to Chicago, while in the case of the stock car it is six mills per mile from Boone to Chicago?

A. Yes, and when the refrigerator car wore out the fellow that owned it would have to replace it. When the stock car wore out we would have to replace it.

Q. When it is yours?

A. Well, it is ours.

Q. But you get the six mills if it is yours?

A. Yes.

Q. Assuming both of them belong to somebody else, as refrigerator cars always do, I suppose, the one is paid on the basis of six mills per mile and the owner replaces it, and the other a cent a mile and the owner replaces it?

A. Yes.

Q. Now, when you figure that your two trains have these different expenses and the different expenses on the terminals I would like to know how you make it that it costs you twice as much to haul a stock yards train as it does that train of packing house product?

A. I don't recollect that I stated it cost twice as much.

Q. That is where I probably misunderstood you?

A. The question was put in a different way. I think you will recall it was a question of the distribution of a train of empty stock
cars, west-bound, at various places, *versus* hauling a train
375 of fully loaded dressed beef from Omaha to Chicago; and there is considerable difference to my mind in that transaction.

Q. Take the case of hauling that dressed meat train from Council Bluffs to Boone?

A. Yes.

Q. Do you believe that that cost you less money than it does to pick up these cars between Council Bluffs and Boone into the train?

A. I do. But it is pretty difficult to predicate a case, Mr. Cowan, on one car or one train or one day. There is a thousand matters of operation that are equitably chargeable to every car and every train and every day, and I can't possibly particularize as to any one car or any train or any one day in the division of expense.

Q. You form your opinion, as an operating man, from all of the set of circumstances as you view it?

A. Yes, the entire operation of the railroad.

Q. And another operating man that expresses his opinion upon it, whatever it may be, doubtless does it from the same standpoint?

A. Well, I can't tell what is working in anybody else's mind, of course.

Q. Well, he would have the same opportunity to do it?

A. He would.

Q. The 300 miles haul on the refrigerator cars that were not on the others would amount to $3.00 of the train was actually all picked up at Boone, the stock train?

A. I beg your pardon.

376 Q. In the case we have been discussing, the instance of the packing house product train from Council Bluffs, and the live stock train from Boone——

A. Yes.

Q. You would be at an expense of $3.00 more going from Council Bluffs to Boone and back, with the refrigerator cars, for each car, being 300 miles the round trip?

Mr. LYNDE: More than what?

Mr. COWAN: More than you would in the case of the live stock train.

The WITNESS: Well, you are starting the dressed beef train from Omaha and the live stock train from Boone. We started out to start both engines and crews from Council Bluffs and the live stock train would pick up the cars, and the dressed beef train, all leaving Council Bluffs, the difference in mileage would be the proportion of difference that you picked up your live stock cars.

Q. I was going to follow that with another question—except there should be deducted from that $3.00 whatever the mileage would be on the stock car from the point it was picked up and brought to Boone?

A. Yes, that would be six mills a mile.

Q. Then for the 350 miles, or substantially that, from Boone into Chicago, there would be the amount of eight mills per mile more for the refrigerator cars that you have to pay out, than you would on the stock cars?

A. It would be four mills per mile.

377 Q. Four mills per mile for 700 miles, or *visa versa*, it amounts to the same thing?

A. That is right.

Q. Which would be $2.80; and assuming that half of your live stock cars were handled for 50 miles, or all of them were handled for 50 miles further than Boone, at six mills, it would be 60 cents for double 50 miles, and six mills per mile; so you would have the difference in your mileage in favor of the live stock train of $5.20 that you actually pay out?

A. I don't dispute that. I don't make a point that there is any difference between the cent a mile and six mills a mile.

Q. And $1.75 on the terminal expenses, which would make $6.75

more than you actually pay out on the dressed meat train than you do on the live stock train?

The COURT: Do you admit that? Do you say that?

The WITNESS: No, I don't admit that. He has figured that out to please himself, and I don't dispute his figures; but I can put up a hypothetical case which will look just the other way, if you desire it.

Q. But it is in view of what those figures appear to show?

A. Your illustration, as you figured it, is correct. I don't deny that. I confirm it.

Q. And it is in view of that extra cost that has to be paid out for the use of the cars and terminal charges on the dressed meat and packing house shipments more than the live stock shipments
378 that leads me to question you as to how it can be made different, that it costs twice as much for the live stock traffic as it does for the other?

A. Well, I don't claim that there is any point between allowing ourselves six mills per mile on our stock cars and paying one cent a mile on the refrigerator cars. You may use that in any way that you see fit; one costs just about as much as the other. Our six mills a mile will make the repairs on the cars and replace them about once in 15 to 17 years—17 years—and I suppose the cent a mile on the refrigerator cars will make their repairs and replace them in 17 years, and one is like the other.

Q. I made my figures on the basis of getting the equipment in both instances from somebody else, one cent a mile, and the other six mills a mile.

Mr. LYNDE: We make the repairs in one case and the owner in the other.

Mr. COWAN: No, in the case I figured the owner does the replacing, in both cases.

Mr. SEVERANCE: Mr. Gardner says they use their own stock cars.

Mr. COWAN: If they do, they get the six mills per mile to make the repairs and renewals with.

Mr. SEVERANCE: They can't do it for six mills a mile.

Q. I understood you to say one would be about the equiva-
379 lent of the other?

A. In my judgment it would.

Q. In regard to the disinfecting in the handling of this Iowa live stock, there is no disinfecting of the cars?

A. No. There is once in a great while. I don't recall when the last panic was about that. That wouldn't enter into——

Q. That was all the answer you gave in respect to the live stock traffic generally and intended to embrace the Missouri river?

A. Yes.

Q. You mentioned one item of holding at the wrecks. You said if you had a wreck you couldn't hold the live stock; you would have to take them somewhere and unload them?

A. Or take them around. That would be the alternative.

Q. Something like that would be done if it could be done, and the

very same thing would apply to the dressed meat, if you had that in cars?

A. We would never have that, paying another railroad 50 cents or a dollar a mule for the privilege of using its track to get dressed beef around; whereas we would pay one or two dollars to get live stock around. There is no similarity whatever.

Q. The cost of that item, as compared with the total revenue, would certainly be extremely small?

A. It would.

Q. In that loss and damage matter, there is one point I want to ask you about. You said you figured out it would cost you about one dollar a car on the live stock?

A. That comes into Chicago, yes.

380 Q. Do you have in mind the total amount paid for loss and damage claims on your live stock for any given year?

A. Yes, practically the total amount. We don't entertain claims from every delay, except on live stock, that does come to Chicago. We have very few personal injuries on live stock trains, except those coming to Chicago. South Omaha is not such a popular route for live stock that goes in there. We take into South Omaha 20,000 carloads of stock a year. We take up here to Cudahy five or six thousand carloads of stock a year; Cedar Rapids two thousand carloads of stock a year. The amount I mentioned of $65,000.00 covers all of the stock on the Northwestern Railroad, but it is all incidental to the Chicago movement. There is no such thing as a delayed train not making the market at South Omaha and being paid for. They haven't got that unhappy custom out there, fortunately, and the trains run at slow rates of speed. A good portion of it comes from near-by points. There are very few accidents or wrecks. All the market contentions in this congested territory are in the vicinity of Chicago. The personal injuries, since I have known anything about it, nine tenths of them have been on the Chicago market.

Q. In the trial of the cattle raisers' case, involving those Western Roads, I will ask you if you know whether the Northwestern, in its answer in that case, urged these very things as a reason why the rates should not be reduced?

381 A. Well, I don't know that they did. I didn't testify.

Mr. COWAN: I know you didn't but somebody else did.

Adjourned until 10 o'clock A. M. Wednesday, September 20th, 1905.

382 WEDNESDAY, *September* 20, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon WILLIAM A. GARDNER resumed the stand for further cross examination by Mr. Cowan:

Q. Mr. Gardner, to what source of information did you resort to ascertain the amount of live stock carried by each of the different

railroads into and out of the Chicago market and likewise Omaha to and from the Missouri river market?

A. Well, we had the stock yard report for the Chicago market and I presume there was one for South Omaha. I have not got that, be we keep our own record of our own business at South Omaha.

Q. I wish you would see if you recognize that as a stock yards report. (Handing paper to witness.)

A. Of 1904, yes sir.

Q. The statistics in those reports are regarded as being an accurate source of information, are they?

A. Oh, yes, and are so accepted.

Q. And the same with the reports at the other markets, the published reports?

A. I assume so.

383 Q. I wish you would turn to the Chicago & Northwestern Report in the printed report on page 27.

A. I have it here.

Q. That reports the shipment of the number of cattle the number of calves, the number of hogs, the number of sheep and the number of horses and the total number of live stock cars for each month of the year into Chicago via your line?

A. It does.

Q. And also reports the total number for each month of live stock cars and of the number of head of live stock shipped out. Is there a business of selling feeders on the yards at Chicago which are bought by persons intending to feed the live stock in Iowa which are shipped from Chicago to Iowa?

A. I believe there is. On the Northwestern road, however, I think that has decreased very materially. There used to be more than there is now.

Q. By reference to the report, the number of head of cattle shipped out seems to have been the same—Well, just withdraw that question. Have you any comparative statement of the different number of cars for different years, except as shown by these stock yards reports? I mean have you it at the present time, here with you?

A. No, not with me.

Mr. COWAN: At a later date we will offer the part of the report that we desire. We don't care to offer it at the present
384 time.

The WITNESS: I might with your permission say that those reports are quite liable to be misleading unless you go into it thoroughly. The Cudahy Packing Company, situated near Milwaukee ships more or less stock from the stock yards up to Cudahy to be slaughtered, and there is a good many cows loaded and shipped up into Northern Wisconsin and Michigan from the stock yards. That seems to be increasing every year and while the total number of cars shipped out by the Northwestern may not vary, yet the shipments might go to entirely different places and serve entirely different interests.

Q. There is a large feeder business, as it is called, at the Missouri River markets where cattle are sold and shipped out into the interior of Iowa and then shipped out to some market?

A. Oh, we have a good many feeders from the south-west that go up into Dakota.

Q. And to whatever extent that necessitates the movement of stock in the opposite direction to the large markets, there is a return movement of loaded, a loaded movement of the live stock cars.

A. No, sir, there is not, because these feeders come to us in foreign cars. We don't send our cars after those feeders and the companies owning those cars would not receive them at Chicago if we loaded them back to Chicago. We have to return them, may be
385 about seventy five per cent. or probably eighty per cent. to the road owning the car. We cannot afford to hold them going in the direction that the feeders came from, because if we do the per diem would eat us up.

Q. Do you not settle for any of those cars on the basis of so much per mile?

A. I presume we do, some of them, yes, sir; but they would get after us pretty hard if we did not return the cars promptly and one basis of the transaction is that the cars are to be returned with promptness.

Q. You do not use the cars which you ship out with feeders in them, to ship any other cattle to market?

A. We do with what few feeders may go to Chicago because they would go in Northwestern cars. Feeders that might go by South Omaha—Well, they don't necessarily have to go by the way of South Omaha, they might come by way of Nebraska. We don't utilize those cars with a return load, to any extent.

Q. Do you not ship railroad material in the way of ties and iron in cars going west?

A. We ship some iron in stock cars going west but very few ties for this reason: We can get more utility out of the box car going west with ties because a box car goes up in the northern country loaded with merchandise and it can come back with ties for the west or under load with grain. If you send a stock car up into
386 the northern country we would have to come back empty with it and then it would be loaded with ties and have to be unloaded and taken somewhere else to be re-loaded with stock.

Q. Do you not ship lumber out of Chicago in stock cars?

A. No, sir, we don't. We used to but the Chicago lumber market in the west is played out. There is no Chicago lumber and no Wisconsin lumber that goes west of the Missouri River.

Q. Do you not get most of your ties at Chicago to ship west?

A. No, sir. Out of the two million or two million and a half of ties that we buy a year, we don't buy to exceed 350,000 of them in Chicago. We buy say 600,000 that come up from the south in Illinois Central stock cars and generally onto our road and are delivered to us at Dixon.

Q. Do you not ship coal and coke in stock cars, west?

A. We have no coke to move west. We do use some stock cars, as I said yesterday, I think, loaded with company coal in the sum-

mer months at the Iowa mines that go out into Dakota and since my testimony yesterday I sent for the auditor and the car accountant and they both seemed prepared to make an affidavit to the effect that not one fourth of one per cent. of the stock cars on the Northwestern railroad moved west under load.

I said yesterday that I did not think one per cent. moved
387 west. These people that are in closer touch with it than I am say that they do not think one fourth of one per cent. does. We don't keep a record of the stock cars that go out under load with anything except live stock and we would have to take considerable time and research to make the statement which you requested yesterday and which we will be very pleased to make.

Q. Whatever the actual percentage of the loading is is shown by the accounts which your Car Accountant has?

A. He has no record of that fact and he will have to go over the conductors' reports for twelve months and pick out the stock cars.

Q. He has no separate item of empty—no separate or distinct item of stock cars?

A. No, sir, he has not.

Q. On adjournment yesterday evening or just before adjournment you had been asked in regard to the total amount of damage claims that you had paid on live stock and as I understood you you estimated it at $1.00 a car. You did that by dividing into the total amount by the total number of cars delivered into Chicago and that ran up to about $1.00 a car?

A. It was $63,000.00.

Q. I then asked you whether any of it happened in shipments that came from west of the Missouri river or happened west of the Missouri river and I understood you to say that you had
388 not considered that it did in making that estimate of a $1.00 per car.

A. You misunderstood me. I think I said that I had given that consideration, but that such a preponderance of it that happened east of the Missouri river that I did not think west of the Missouri river cut any particular figure.

Q. The facts as you gather them with respect to the loss and damage paid, you get them from your Damage Claim Agent's office?

A. I do and I get a very good and a very general idea from the reports that are put on my desk every morning of the detention to live stock trains. The first thing that we look at in the morning is the live stock trains and the next is the passenger trains.

Q. You cannot pretend that you recollect it from those reports?

A. No, but I do recollect as to what particular days that we had the detention and whether we have had a wreck that delayed the live stock and if we have 800 cars of stock I recollect what time the last train was unloaded at the chutes, etc.

Q. What is the name of your Damage Claim Agent who has a record of those things?

A. Mr. R. C. Richards.

Q. With an office in Chicago?

A. His office is in Chicago.

Q. What are the total number of cars handled by your company for the year, altogether?

A. Of live stock?

389 Q. Yes.

A. Well, I think I repeated yesterday, I will have to do that and add it up as I go along. 63,000 I think it was into Chicago, 20,000 into South Omaha, 7,000 into Cudahy and 2,000 into Cedar Rapids,—about 90,000 cars.

Q. Now, then you handled some live stock going onto the ranges?

A. The feeders that you referred to a few moments ago.

Q. Then you handle range stock that goes over your road out to Bellefourche?

A. That is included in the South Omaha stock, 17,000 cars of that stock going into South Omaha is from Nebraska points and from the ranges.

Q. I am talking about the stock shipped from Texas and so on.

A. Well, you probably know that most of that drives up there, it don't go by rail.

Q. Well, you know that none of it drives, don't you?

A. It don't go by rail or else somebody else must carry it. I believe the Burlington must carry some of it.

Q. But you don't claim, do you, that you don't carry that range stuff that comes from the Pan Handle of Texas?

A. I don't claim anything about that. I know positively that we don't carry any 17,000 car loads of stock into Bellefourche going into Nebraska to unload that we get out of there.

Q. But you do carry a lot of stock out there?

390 A. Well, I can look that up for you and give you accurate information.

Q. Well, somewhere from 90,000 to 100,000 cars that your company handles?

A. Well, 90,000, anyway. I should not want to go above that without investigating the feeders that you spoke about.

Q. And the total loss and damage claims amounted to $63,000?

A. Yes, sir.

Q. How do you get at the figures of the loss and damage paid on the dressed meat and packing house products?

A. I get at the figures on that with the aggregate of the packing house product that we carried both in car loads and in small lots.

Q. What was the total of that?

A. I can give that to you accurately as I have it here.

From the Union Stock Yards at Chicago, 1586 cars. From South Omaha 3331. From Sioux City, 1194. From Cudahy 4543 and from Cedar Rapids 758 and I testified yesterday that there was in the neighborhood of 255 each from Marshalltown and from Des Moines that would be 500 cars, making a total of 12,000 cars.

Q. What was the total amount of loss and damage paid on packing house products and dressed meat?

A. $5,000.00, five thousand two hundred and something.

Q. For the same period?

A. For the same period.

391 Q. Is it not a fact that the packers are furnished for their employés who travel over your line in their business in some way or another, with transportation?

A. Absolutely not to my knowledge and I issue the annual passes.

Q. They are not furnished tickets or anything either way?

A. No, sir.

Q. Well, now how is it with respect to the representatives of the private car lines owned by them?

A. The private car lines?

Q. Yes.

A. No, sir. No private car lines use our railroad except the fruit refrigerator lines from California and those packing house lines, and we don't give them any passes to my knowledge.

Q. There are certain statistics with respect to the operating expenses which have been referred to in the testimony and I desire to ask you if they are not contained in the annual reports furnished to the Inter State Commerce Commission as follows: The average car loading; the average number of loaded cars per train; the percentage of the empty to the loaded car mileage; the cost of operation of each and every department of the railroad; items of operating cost including wages, fuel, supplies, and materials, repairs and renewals of cars, repairs and renewals of locomotives and the

392 various items of repairs and maintenance of the roadway and the like of that. Those matters are all contained in the sworn reports to the Inter State Commerce Commission made annually.

A. They are.

Q. Any one testifying as to what they are, if he was in doubt would resort to that same source of information?

A. Yes, sir.

Mr. COWAN: To save a good many questions I desire to ask counsel representing the defendants, if they are willing to stipulate that the Annual Reports of the railroads filed with the Inter State Commerce Commission and the statistics therein contained and the tariffs on file with the Commission, may be used as evidence in the case to the extent that either party desires to use it provided that each party notify the other of what he desires to use and give an opportunity to furnish such other statistics from the same source as he may please to do.

Mr. SEVERANCE: I will decline to make that stipulation on behalf of our road for a very good and substantial reason.

Mr. DAWES: I decline on behalf of the Chicago Burlington & Quincy. The complainant has introduced his case. Why should we at this juncture stipulate anything more? That is the basis of my objection.

Mr. SEVERANCE: That is the reason of my objection.

393 Mr. COWAN:

Q. Mr. Gardner, I have in my hand the printed annual report of the Chicago & Northwestern Railway Company for the year ending June 30th, 1904, which you handed to me this morning. I will ask

you to state whether or not the statistics and reports as therein contained are correct as to the matters therein stated concerning the operation of your railroad?

A. It is the annual report and of course it is in a general form and it is correct, yes sir.

Mr. COWAN: I desire to have it marked so that——

Mr. LYNDE: It is not an exhibit to Mr. Gardner's testimony.

The COURT: For identification it may be marked.

Mr. COWAN: I was just having it marked for identification.

Mr. LYNDE: Well, that is all right but you wanted it marked as an exhibit to his evidence.

Mr. COWAN: Well, very well, let it go that way.

(Pamphlet referred to is marked "Gardner Exhibit A. F. B. D.")

393*a*–393*c* EXHIBIT "A F B D" GARDNER, Vol. 4, p. 393.

1904.

Forty-fifth Annual Report of the Chicago & North Western Railway Company, June 30, 1904.

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393*d* Forty-fifth Annual Report of the Chicago and North Western Railway Company, June 30, 1904.

The fiscal year of the Company having been changed by the Board of directors to close on June 30th instead of May 31st, as explained in the circular of the President to the Stockholders dated January 2nd, 1904, this report is made to include the thirteen months from the end of the previous fiscal year (May 31, 1903) to the end of the new fiscal year (June 30, 1904), the results for the intervening month (June, 1903) being shown separately herein.

Details of Income Account for the Twelve Months Ending June 30, 1904.

Average number of miles operated for twelve months, 7,403.97.

Gross Earnings for Twelve Months.

From Passengers	$13,027,708 46	
From Freight	37,254,538 88	
From Express, Mail and Miscellaneous	3,052,386 52	
Total Gross Earnings for twelve months		$53,334,633 86

Operating Expenses and Taxes for Twelve Months.

Operating Expenses (66 $\frac{35}{100}$ per cent. of Gross Earnings)	$35,389,303 96	
Taxes	1,837,805 33	
		37,227,109 29
Net Earnings for twelve months, carried forward		$16,107,524 57

393e	Net Earnings for twelve months, brought forward		$16,107,524 57
	Other Charges for Twelve Months.		
	Interest on Bonds and Interest (including a full year's interest on Fremont, Elkhorn & Missouri Valley Railroad Bonds)	$7,035,718 26	
	(NOTE.—Net amount after making the usual deductions for dividends received on C. St. P. M. & O. Ry. preferred and common stock.)		
	Sinking Funds	225,500 00	
			7,261,218 26
			$8,846,306 31
	Add, Income from Investments		553,435 00
	Net Income for twelve months		$9,399,741 31
	Dividends, viz.: 8% on Preferred Stock and 7% on Common Stock (including a full year's dividend on the increase in Capital Stock, as against a half year's dividend for the preceding year)		5,174,924 00
	Surplus Net Income for the fiscal year ending June 30, 1904		$4,224,817 31
	Add, Amount to Credit of Income Account for the Month of June, 1903, being the intervening month between the close of the old fiscal year (May 31, 1903) and the opening of the new fiscal year (July 1, 1903), for particulars of which see page 25		871,367 53
	Surplus Net Income for the thirteen months ending June 30, 1904		$5,096,184 84
	Less, Amount of Expenditures for Construction, Improvements and Permanent Additions to the property deducted from the Surplus Net Income for the thirteen months ending June 30, 1904, by authority of the Board of Directors		4,000,000 00
	Balance Income for the thirteen months ending June 30, 1904		$1,096,184 84
	Balance to Credit of Income Account, May 31, 1903.		9,901,098 01
	Balance to Credit of Income Account, June 30, 1904.		$10,997,282 85

393*f*–393*j* For the purposes of comparison throughout this report, the results for the new fiscal year ending June 30, 1904, are compared with the corresponding twelve months ending June 30, 1903. On this basis, comparisons for the twelve months ending June 30, 1904, are as follows:

Passenger Earnings increased	$865,711 46	
Freight Earnings increased	1,449,531 14	
Express, Mail and Miscellaneous Earnings increased	380,249 43	
Increase in Earnings		$2,695,492 03
Operating Expenses increased	$3,374,125 96	
Taxes increased	1,310 71	
Increase in Operating Expenses and Taxes		3,375,436 67
Decrease in Net Earnings		$679,944 64

The total increase in operating Expenses is distributed as follows:

For Maintenance of Way and Structures		25.76	per cent.
For Maintenance of Equipment		9.11	"
For Conducting Transportation, viz.:			
Fuel for Locomotives	28.79 per cent.		
Wages	22.91 "		
Supplies and Miscellaneous Expenses	8.02 "		
		59.72	"
For General Expenses		5.41	"
		100.00	"

* * * * * * *

393*k* *Freight Traffic.*

The details of Freight Traffic for the twelve months ending June 30, 1904, compared with the preceding twelve months, were as follows:

	1903.	1904.	Increase Amount	Increase Per cent.
Freight earnings.....	$35,811,007 74	$37,254,538 88	$1,443,531 14	4.03

	1903.	1904.	Percentage of increase or decrease.
Tons of Freight Carried.....	30,498,440	28,128,810	7.77 Decrease
Tons of Freight Carried One Mile	4,042,788,811	4,066,140,935	.58 Increase
Average Earnings Received per ton..	$1.17	$1.32	12.82 Increase
Average Earnings Received per Ton per Mile.....	.89 of a cent	.92 of a cent	3.37 Increase
Average Distance Each Ton was Hauled..	132.56 miles	144.55 miles	9.04 Increase
Total Mileage of Freight Trains.	17,531,086	18,106,231	3.28 Increase
Average Number of Tons of Revenue Freight Carried per Train per Mile Run.....	230.61	224.57	2.62 Decrease
Average Number of Tons of Revenue Freight Carried per Loaded Car per Mile Run....	12.97	13.04	.54 Increase
Average Approximate Earnings per Mile Run by Freight Trains.....	$2.05	$2.07	.98 Increase

Maintenance of Way and Structures.

The total Operating Expenses of the Company for the twelve months ending June 30, 1904, were $35,389,303.96; of this amount $7,166,308.14, or 20.25 per cent., was for expenditures pertaining to the Maintenance of Way and Structures. Included in these
393*l* expenditures is the cost of 53,530 tons of steel rails, the greater portion of which was laid in replacement of rails of lighter weight in 445.81 miles of track; also the cost of laying 2,333,616 new ties.

The expenditures for Maintenance of Way and Structures also include a large portion of the cost of ballasting 14.67 miles of track with crushed stone, 203.11 miles with gravel, and 78.08 miles with cinders and slag; the erection, in place of wooden structures, of 62 new steel bridges on masonry, and 13 on pile supports, aggregating 3,496 feet in length and containing 2,524 tons of bridge metal; and the replacement of other wooden structures with masonry arch and box culverts and cast-iron pipes, the openings being filled with earth. The wooden structures replaced by permanent work aggregate 11,246 feet in length.

* * * * * * *

Q. Do you know how much of the packing house products is carried in cars which do not also carry the dressed meat and how much of the dressed meat is carried in cars which do not also contain packing house products?

A. No, sir, I am innocent on that question.

394 Q. Are the weights on which you receive payment for freight, the weights furnished you by the packers or does the Western Weighing Association at Chicago weigh these cars and do you settle them on that basis?

A. Why, as far as my knowledge goes they are billed out of South Omaha at actual weight which is verified,—the packer's weight which is verified by the Western Weighing Association.

Q. You say so far as you know, but do you know that it is a fact that the Western Weighing Association weighs these cars and furnishes you the estimates or not?

A. No, I cannot testify to that, I have had occasion to go into that. I know this, that we test all of our weights and everything very carefully regardless of the Weighing Association or anybody else.

Q. Do you know whether the cars which contain packing house products and dressed meats are loaded heavier for one railroad than another, or do you know whether they run about an average of the same?

A. I have no means of knowing that except the testimony that I have erred in the various stages of this case. There seems to be some little difference.

Q. Is there a difference in the loading dependent upon the scarcity or plentifulness of cars?

395 A. Well, I have never had occasion to see that as I have no recollection of any time when there has been a scarcity of cars on our railway. We seem to have had enough.

Q. In the printed annual report for 1904, there does not appear to be statistics made up and figured out by the mile run of locomotives as there is in some of the previous annual reports. I will ask you to state whether or not previous to 1904 your annual report contained statistics where the locomotive and other cost per mile run was figured out?

A. I believe they did, some of them. I cannot tell you just what date that was changed. The accounting department makes up that annual report, you know, I don't have the handling of that.

Q. I notice in the report of your testimony that you state in your direct examination that a train carrying packing house products and dressed meat will probably contain five cars more on the average than a train carrying live stock. Are you prepared to state definitely that that is the case or not, Mr. Gardner?

A. Well, we are now making up a report that you asked for yesterday and will verify that.

Q. That will show deginitely?

A. Yes sir.

Q. Where do you keep on file all the train sheets which show the actual running of the trains on the road?

A. In the different Train Despatchers' offices.

396 Q. Well, now in the train moving out of Boone, Iowa, eastward to Chicago, at what office would the train sheet be kept that shows the movements of those trains?

A. At Boone, from Boone to Clinton and in Chicago from Clinton to Chicago.

Q. If you wanted to ascertain the actual definite facts with respect to the method in which the live stock trains were handled and the packing house product trains, and to ascertain the speed that they actually made between stations, you would have to resort to those train sheets, would you not?

A. We would.

Q. What length of time and what months or parts of months would probably be representative and indicate the relative speed and the method in the respective trains of live stock movements, on the one part and the dressed meat and packing house products on the other?

A. You suggested yesterday taking April and October.

Q. I just inquired if that would be a good example.

A. Yes, I think possibly it would be fairer to us to take one winter month, say January or February, with one spring month.

Q. Could you furnish for examination the train sheets for certain Mondays or such other days of the week as you would please, for two or three days in a month or two?

A. I can have copies of them made. We should not want to let the original leave our office or possession.

397 Q. I would not want you to go to much trouble to do it but I would like to see definitely.

A. I should like very much to exhibit them here, no matter what the trouble is. I should like very much to have you see them.

Q. Take the first and second Monday and Wednesday—There is plenty of live stock handled on both days?

A. Yes, those are the principal days.

Q. Of either January or February, and then April or May, if you please, take April, for example and October?

A. April, October, January and February.

Q. That would probably be representative?

A. Yes, I think it would.

Q. Take the first and second Monday and the first and second Wednesdays.

398 The COURT: I think there ought to be some way of your serving the notice on these people of what you want instead of taking up the time of the Court. I would like to hasten this matter as much as possible without interfering with the rights of counsel. I should think that you could make out a list at night in your office and offer it in the regular way, and not spend an hour or two of the Court's time in asking for things on cross-examination.

Mr. LYNDE: Those things that are called for really mean weeks' work for us.

The COURT: Well, that is for you gentlemen to settle outside of court.

Mr. LYNDE: Of course we can agree as we do here. We are perfectly willing to furnish them but they cannot be brought into court.

The COURT: I suggested this simply as a method for shortening time in asking questions on cross-examination. I should think that might be done and then we could get along with something else.

Mr. COWAN:

Q. In the handling of live stock from St. Paul, is it any more expensive than from the Missouri River?

A. Yes, our grades are greater between Chicago and St. Paul than they are between Chicago and the Missouri River. The maximum grade between Chicago and Missouri River is seven-tenths.

Between Chicago and St. Paul we have one per cent. grades
399 in some places.

Q. How is it between St. Paul and Chicago, one per cent. that way too?

A. The same in both directions.

Q. Is there any reason which you know of which should make a greater difference between the packing house products, dressed meat and live stock from St. Paul than that difference between the same commodities from the Missouri River to Chicago?

A. From my standpoint there is some reason. It costs us more on account of the grades to handle live stock from St. Paul.

Q. It likewise would on the packing house products and dressed meats?

A. Yes sir.

Q. Is there anything in your mind which warrants a different relation of the rates on the respective commodities from Chicago to St. Paul, or St. Paul to Chicago and between the Missouri River and Chicago?

A. I don't believe I can give you an intelligent reply to that question now, it has never occurred to me to reflect upon it.

Q. Speaking of the ordering of cars and the holding of them for loading, isn't it a fact that the cars are generally ordered some days in advance of the shipment?

A. No sir.

Q. You are certain of that?

A. Yes, I used to distribute them myself personally.

400 Q. What length of time did they generally give you?

A. They generally give you from 24 to 36 hours and in many instances you only get twelve hours. That is not due to any malice on their part or anything of that sort; it is due to market conditions. A man may go out in the country, people go out to buy this stock and they may buy more or less. When they start out their intentions are all right to ship ten cars of stock but when they get out and buy it they want — send in five cars or *vice versa*. They may go out to buy five and then end up in buying ten. The orders for stock cars are sent by telegraph invariably. If it could be done several days in advance it would be done by mail.

Q. Those orders are put in to your various agents?

A. They are put in to the agent and the agent notifies the train dispatcher and the various dispatchers notify the distributor of car equipment in Chicago.

Q. Isn't it a fact that when you bring in a great many cars say on a Monday, that your engines are going back, taking the first train back to distribute them?

A. We do that invariably whenever we can take them out, we

take them out to the cleaning yards and then distribute them. Some fifty per cent. of the mileage of the North Western Railroad, however, is on branch lines and a very large proportion of the
401 live stock originates on the branch lines and we do not haul any very great number of stock cars up onto those branches until we know that they are wanted.

Q. But you do distribute them at convenient points?

A. We do, we get them just as close to where we think they are going to be loaded as we can.

Q. And that is true with respect to all traffic where there is a very large volume of it like grain. You redistribute your cars when the grain is moving?

A. You take a good many of the country stations have enough stuff like rough merchandise in the station to take care of the grain business out of the station. The distribution of the box car is absolutely different and distinct from the distribution of the stock car.

Q. Where does the packing house products and the dressed meat moving out of Cedar Rapids, go to?

A. I don't know as I can tell you that. Well, I do know too. The large majority of it is export stuff, I think. They cater to a foreign market.

Q. That export stuff moves through the Mississippi River gateways and does not come into Chicago at all?

A. Well, I think a small percentage of it might come to Chicago, but not much of it.

Q. There is in the record, the annual report of your road for the year 1902, for the Commission. I would thank you to fur-
402 nish us with one for 1903. Will you be kind enough to do so?

A. Yes sir.

Q. One question more, Mr. Gardner, and I am through. Does it cost any more or less to handle live stock in full train loads from the Missouri River to Chicago than it does a train which you would pick up and receive say at Boone, Iowa, into a full train and bring it on?

A. That is a question that we discussed here yesterday. I don't know whether you misunderstood the direct question or whether I misconstrued it or whether we all labored under a misapprehension. What I want to be understood as testifying to is to this effect; that a live stock train or a dressed beef train picked up at several stations between Council Bluffs and Boone will cost approximately twice as much to handle between Council Bluffs and Boone as a through train does from Council Bluffs to Boone that does not set out or pick up any cars. The balance of the journey from Boone to Chicago if it is made under the same conditions will of course cost precisely the same as to the pay of the engine man and the trainmen and the amount of fuel burned and other things, but I explained it somewhat at length yesterday that in my judgment it cost 30 per cent. more to handle a live stock train than it did to handle a dressed beef train for a variety of reasons, very few of which I could express in dollars and cents.

403 Q. I believe we went over yesterday the items of detail so far as you were able to state them in dollars and cents.

A. You went over some of them, yes. I think we went over the cost of the Stock Yards and the matter of the loading.

Mr. COWAN: That is all.

Re-direct examination by Mr. BAXTER:

Q. In your cross examination you were asked as to the comparative cost of cars as between live stock and packing house products. Now, assume for the purpose of this question that the cost per car is the same in both questions, that the average weight of a live stock car is 9.7 tons and the average weight of the contents of the packing house product car is 12.2 tons and the cost per car is the same. Will the revenue paying freight in the live stock car cost more or less per ton than the revenue paying freight in the packing house car?

A. It will cost more per ton to move the lesser load in the live stock car.

Mr. LYNDE:

Q. This 30 per cent. additional cost in the live stock train over the dressed beef or packing house product train would apply to the handling of that train from Boone, Iowa, to Chicago if I understand you correctly?

404 A. No, it would apply the entire distance from the standpoint of the general principal. You might figure out some detail that would only apply east of Boone.

Q. What I mean by referring to Boone as distinguished from the haul from Council Bluffs to Boone, I mean to eliminate the pick up part of the business.

A. Yes sir.

Q. You treat Boone as a concentrating point where the train is made up as an entirety. Now, from Boone to Chicago is it a fact or not that the live stock train would cost more to handle than the dressed beef or packing house product train?

A. Why, the live stock train would cost the most. Possibly in one particular car or cars, but you must spread it over every live stock train those things that are particular to the operation of the live stock trains.

Q. You still handle those live stock trains at a greater speed from Boone to Chicago?

A. We do.

Q. How about your movement on these rush days, those incidental expenses that you refer to as are peculiar to the live stock business, those days are Sundays and Wednesdays?

A. Well, more particularly on Sundays and Wednesdays than any other days of the week as half of the stock that we handle comes in on Monday.

Q. What is the cost of your dressed beef trains on Sundays?

A. We don't have any dressed beef trains on Sundays, they don't load any at Omaha on Sunday.

405 Q. So these peculiar expenses that are incident to the handling of this traffic on Sundays are to be found alone in the live stock traffic?

A. That is true.

Q. Now, in the pick-up business on the branch lines that concentrate we will say at Boone, the cost is very much greater, is it not?

A. It is.

Q. Than in the handling of the train from Boone to Chicago?

A. Yes sir.

Q. Boone is not a place that you would describe as a pick up point, is it, it is a concentrating point?

A. It is a concentrating point of some branches.

Q. The questions that were put to you on cross examination by Mr. Cowan relate, as I understood him, wholly to the main line and apparently did not include the branch lines which concentrate at Boone. Now, the branch lines furnished about 75 per cent., I think you said, of the live stock?

A. I said 71, I think, of the stock, 71 per cent.

Q. That is where you get the stock and that is where you incur this peculiar and especial expense, those expenses that are attached to the picking up of live stock from station to station?

A. It is.

Q. As to the cost of cleaning the cars. If I understand you correctly, on the North Western those cars that are unloaded at
406 the Stock Yards at Chicago are all cleaned at Clinton?

A. They are cleaned at Clinton.

Q. So you had the cost of that too so far as it includes the hauling of the offal and the manure?

A. We do, about two tons to the car.

Q. Then what are the peculiar expenses there?

A. Well, you have to have ten or fifteen acres of ground upon which to clean the cars. You have got to elevate your tracks on a trestle. Our trestle at Clinton cost us about $4500. It is necessary because if you don't get your cars higher than the natural surface of the ground, you will clean but very few cars before the manure piles up and gets higher than your cars. We have erected this trestle and then it has to be arranged so that it can be moved from one place to another, a hundred or two hundred feet at a time at the least expense. There is a continual condition of spontaneous combustion going on. The more it rains the more heat you get in the manure. Eighteen months after we constructed the trestle there the whole thing burned up. Do not infer that these trestles are constructed of new material. We take second hand bridge material for that purpose so that the trestle cost us only about five or six dollars per lineal foot instead of ten or twelve dollars a foot.

The ties burn out very frequently on these tracks where a tie on the main line will last for ten years. These have to be re-
407 newed every two years or three years. They are special side tracks that can only be utilized for the particular purpose of cleaning the cars. They are outside of the main yard and you must necessarily take the stock cars when they come in dirty, and switch

them around onto the cleaning track and then move them back onto the main yard, to make them up into a train again. I was just going to add that the mere fact of putting a man into a stock car with a pick and shovel don't in any wise express the expenses incidental to the operation as a whole.

Q. Then as to your labor itself, do you keep men employed particularly for that purpose?

A. At certain seasons of the year we can employ men there by the hour to clean stock cars at such times as there may be stock cars there to clean.

Q. What seasons are they?

A. Those are in the months when there is not so much municipal improvement going on, such as paving and so forth. That is during the fall and winter. During the summer months it is difficult to get men unless we pay them ten hours a day whether they work or not. Of course we endeavor to keep them busy. We have a large feeding yard at Clinton and if there is no stock cars to be cleaned, we send them over there. At the same time there is con-
408 siderable loss in their trotting back and forth from one place to another. There is one other item and that is the necessary detention to the stock car during the process of cleaning. If we did not have to clean the stock cars on the road, I suppose we would get along with say 600 or 800 and possibly 1000 cars less.

Q. That would be practically then 20 per cent.?

A. From 15 to 20. It takes as long ordinarily to clean a string of stock cars as it does to move them from the Chicago yard to Clinton.

Q. I was going to ask you about how long that time was?

A. Five to seven hours.

Q. These stock cars—did you state the cost yesterday?

A. The last we bought cost $650. They would cost now about $800.

Q. So that practically involves an investment of $650,000 to $800,000 that you have to put in additional cars in order to make good time when you lose the use of your cars in the cleaning process?

A. Yes sir.

Q. Now, Mr. Gardner, have you made a comparative statement of the revenue and other items incident to the running of a full train, maximum capacity of live stock cars and a full train maximum capacity of dressed beef or packing house product from the Missouri River to Chicago?

A. Yes sir, I have.

Q. Have you got that statement with you?

A. I had the statistician in my office take a year's busi-
409 ness, that is between the Missouri River and Chicago?

Q. Yes.

A. I have got that but this one has got some marks on it. I will give you a clean one.

Q. These statements are, I see, headed one "live stock," the other "dressed beef" and so forth.

A. Yes, sir. It doesn't show what period, but it was for the 12 months ending June 30th, 1905.

Mr. COWAN: Have you an extra copy which I can look at while you are testifying?

A. Yes, sir. (Handing a paper to counsel.)

Mr. LYNDE:

Q. What do these statements represent, Mr. Gardner?

A. Well, they represent as nearly as possible the actual amount of live stock from the zone where the 23½ cent rate applies in Western Iowa to Chicago, and they represent a full train of dressed beef, thirty cars of live stock in one case and 35 cars of dressed beef in the other.

Q. You have taken the maximum in each case?

A. Well, we took the live stock from actual figures, then the dressed beef we gave all the benefit of the doubt by putting five cars more in the train and approximated that as nearly as possible.

Q. Well, your statement as to the live stock then shows
410 that on an average the gross tons per train are 845 tons. How many cars would that be, Mr. Gardner?

A. That is about 30 cars.

Q. About thirty cars. There is an average revenue paying tonnage per train of 287 tons of live stock?

A. Yes, sir.

Q. And that on the 23½ cent rate, that pays per car gross $45.50?

A. Yes, sir.

Q. Now, as against that you charge off the expenses, which you estimated at $16.05 per car?

A. That is right.

Q. Leaving net earnings per car for live stock $29.45 and net earnings per train of 30 cars of $872.48, which gives, as you stated, average earnings for train mile of 88 cents. Now, as compared with that the dressed beef statement shows on a basis of thirty five cars to the train——

Mr. COWAN: Let the witness explain.

Mr. LYNDE: He has already explained it if I understood him correctly.

Q. That is the basis you have stated?

A. Yes, sir.

Mr. COWAN: All I call attention to is, let the witness testify instead of counsel.

Mr. LYNDE: I am seeking to avoid unnecessary questions.
411 The COURT: Allright, go ahead.

Mr. LYNDE:

Q. On the basis of a train of thirty five cars of dressed beef there is an average gross tonnage of 1200 tons?

A. There is.

Q. And an average revenue paying tonnage per train of 432 tons?

A. Yes, sir.

Q. That is to say, 432 tons as against 287 tons of live stock?

A. Yes, sir.

Q. On which, applying the 20 cent rate there is an average earn-

ing per car to Chicago from the Missouri River of $45.14. Now, against that you charge the expense account, the items of expense, that is, the mileage that you have to pay and the terminal charges that you have to pay?

A. Yes, sir.

Q. Amounting to $15.85 per car; is that right?

A. Yes, sir.

Q. Leaving net earnings per car on dressed beef for packing house products of $29.29 as against $29.45 of live stock, but making the total earnings on your train of 35 cars of dressed beef net $1041.12 as against $872.48 on the live stock train, is that right?

A. Yes, sir.

Q. And making your average earnings per train mile 1.06?

A. Yes, sir.

Mr. BAXTER: On what?

412 Mr. LYNDE: That is on the products and dressed beef, 1.06 on that as against 88 cents on the live stock. That is figuring the live stock 23½ cents. Now, I note on the statement which I have here in my hand, Mr. Gardner, which you have handed me, that there follows the additional statement as to what would be the effect of applying the 20 cent rate, the local rate on the dressed beef and packing house product, to the live stock?

A. Yes, sir.

Q. By way of reducing the average earnings per train mile. Have you got that statement, that amount there?

A. 69 cents, I think.

Q. I think that is an error, Mr. Gardner, that is the reason I called your attention to it. It is a reduction of 3½ cents, which I take it is in the neighborhood of 14 or 15 per cent.

A. That should be 74 instead of 69.

Q. It should be 74 instead of 69, as I figure it, so I would like to have you make that correction.

Mr. LYNDE: These statements I ask leave to offer in evidence as exhibits "B" and "C" to Mr. Gardner's testimony, respectively. I have changed the figure on this statement. I think that is all. (The statements were marked as requested and introduced in evidence.)

412*a* Fresh Meat and Packing House Products (Thirty-five Cars).

Average revenue tons per train	12.20 tons
Average tare weight of car	22.00 tons
Ratio of revenue tons to weight of car and contents	36.00%
Average gross tons per train, Missouri river to Chicago	1200.00 tons
Average revenue tons per train, Missouri river to Chicago	432.00 tons
Chicago local rate from Missouri river	20.00 cents
Proportionate rate, Missouri river to Chicago on business destined east	18.50 cents
Average earnings per car from Missouri river and Iowa points	$45.14

Less:		
Mileage on car	$10.00	
Switching paid the Chgo. Jct. Ry. on eastbound business	3.00	
Account damage & loss	.85	
South Omaha terminal charge	2.00	
		$15.85
Net earnings per car		$29.29
Net earnings per train, Missouri river to Chicago		$1041.12
Train miles, empties to Missouri river and loads to Chicago		984
Average earnings per train mile		$1.06

This does not in any way consider the actual train movement of the dressed beef product which is one-half to two-thirds of the cost of handling livestock.

Exhibit "B" to W. A. Gardner.

412*b* Live Stock (Thirty Cars).

Average revenue tons per car		9.68 tons
Average tare weight of car		18.50 tons
Ratio of revenue tons to weight of car and contents		34.00%
Average gross tons per train, Mo. river to Chicago		845.00 tons
Average revenue tons per train, Mo. river to Chicago		287.00 tons
Chicago local rate from Missouri river		23.50 cents
Average earnings per car from Missouri river and Iowa points		$45.00
Less:		
Cost maintaining stock yards, water facilities and yard tracks and depreciation on same	$1.75 per car	
Cost a/c damage & loss & injury to stockmen in charge	1.15 " "	
Extra cost of delivery at Chicago above $2.00 terminal charge	1.50 " "	
Mileage on cars at 6 mills	6.00 " "	
Cleaning stock cars	1.25 " "	
Return fare of one man for every third car ($10.24) (2c. mile)	3.40 " "	
Bedding for stock cars	1.00 " "	
	16.05	$16.05
Net earnings per car		$29.45
Net earnings per train, Mo. river to Chicago		$872.48
Train miles, empties to Mo. river and loads to Chicago		984
Average earnings per train mile		$.88
Applying 20c. local rate as ordered by the Commission will further reduce our earnings on live stock per train mile to		$.74

(In arriving at above net earnings, we eliminated only such expenses as are peculiar to the movement of live stock).

This does not in any way consider the actual train movement of livestock, which cost is from 70% to 100% greater than the cost of handling dressed beef or packing house products.

Exhibit "C" to W. A. Gardner, see Vol. 4, pp. 412-413.

413 The COURT:

Q. Mr. Gardner, explain, for it seems to be admitted here that theretofore in other neighborhoods they charge a good deal more for the products than they do for the raw material, live stock. Will you explain why that is?

A. I think it is due to the fact, your Honor, that they have not investigated sufficiently the cost of the movement.

Q. With reference to the cost of the product or raw material, what is the comparative value, or is that shown?

A. No, it is not shown in my testimony.

Q. Is the product worth the most?

A. I assume a car load of the product is worth the most.

Q. Does that have anything to do with fixing the rate, ought not it to have?

A. Well, various testimonies that I have looked over, some of the experts in making rates I believe, have shown it does have something to do with it. I can't remember the particulars.

Q. What do you think controls in making the rate?

A. I think it ought to control, the cost of the service and the tonnage that you can put into a car ought to control. I call your attention to the fact that bulky stuff of light weight, like furniture, vehicles and all that nature, it is classified at a higher rate than live stock is, although we get less of a load of stock into a car than we do of the other commodities I have mentioned. There is scarcely
414 any freight in which you use so small a capacity or utilize so small a capacity of the car as you do in live stock, and there are many other bulky articles of freight——

Q. Weight and value should be controlling elements?

A. Yes, sir, because they enter into the cost, weight particularly.

Mr. LYNDE:

Q. How about competition, Mr. Gardner, between tariff?

A. Well, that has much to do with it; I am quite liable to overlook a good many things, because I do not aspire to know very much about rates, just looking at it from a practical standpoint.

Q. You do not consider the rate question?

A. I have nothing to do with that whatsoever.

The COURT: Supposing there is no competition, supposing the railroads all pool to fix rates, how do they determine those rates? They have pooled in the past, how do they determine the rates then?

A. Well, the rates are determined, I assu-e by the various traffic departments, which are composed of men of a great many years'

service and experience in the business, and generally taken as sagacious, and as I understand it very frequently the shippers have a voice in the classification of freight. If it is classified too high they seek by argument to put the railroads in the right line
415 of thought and generally succeed. The matter of rates, as I view it, is not one of arbitrary action on the part of the railroads, it is more a compromise between the shipping public and the railroads than it is arbitrary.

The COURT:

Q. I suppose they want to get the rates cheap enough to encourage shipping?

A. That would be my idea if I owned a railroad. And at the same time the rate on any particular thing ought to yield enough revenue to remunerate you for that particular thing.

The COURT: That is all, I guess.

Mr. SEVERANCE: One question:

Q. The Court asked you whether the value of the property transported was not an element in fixing the rates. Now, it is a fact, is it not, that what element does not substantially enter into the question as to the amount of or rate that should be charged except as far as may be necessary to cover insurance of the property; that is, the railroad is responsible for the property, for its value?

A. It is.

Q. And if it is responsible for something that is worth $2,000, it would be entitled to charge a rate above what it would charge for property valued at $1,000 because of that element of responsibility; that is true, isn't it?

A. I believe it is, and there is some testimony in this case
416 somewhere from Mr. Bird, which went into that thing.

Q. Well, that is the ground upon which the element of value is considered?

A. Yes, sir.

Q. Now, isn't it also a fact that the losses that have to be paid by railroads aggregate only a fraction of one per cent. so that the matter of insurance is a very small item in estimating the value of transportation?

A. It is.

The COURT: They would charge more for diamonds than they would for ordinary rocks?

A. I assume so, yes, sir.

Q. That would be governed by the danger of their being stolen, wouldn't it, that difference?

A. Well, there would be a very much greater risk and responsibility in the transportation of one than the other. We would have to safeguard it and pay a great deal more attention to it.

Recross-examination.

By Mr. SHAVER:

Q. Doesn't weight add to the cost of the transportation?

A. Yes, the increased weight of the load, as the weight of the car is a factor in the cost.

Q. The greater the weight the greater the wear and tear on the rails and road bed?

A. Well, the speed has got as much to do with that as
417 anything.

Q. The weight has also something to do with it?

A. It does, but you figure your hammer blow of the locomotive more from the speed than you do from the weight, and the same way with the car.

Q. The greater the weight the greater the friction on the rails, I suppose?

A. The greater the weight the greater the wear on the rail, probably.

Q. And it requires more fuel to haul a heavy train than a light one, does it not?

A. That is dependent on the speed entirely. We can burn more fuel with 25 cars of stock on certain portions of the road than we can with 60 cars of dead freight.

Q. The refrigerator cars are much heavier than live stock?

A. Yes, it shows, I think that with the ice and one thing and another, they are heavier.

Recross-examination.

By Mr. COWAN:

Q. You figure 9.68 tons net revenue paying freight per car in the case of live stock?

A. I do.

Q. You included in live stock hogs, sheep and cattle?

A. We did.

Q. Your cattle cars pay a net revenue of 23000 pounds, I believe?

A. I testified yesterday it was in that neighborhood.

418 Q. Didn't you include a lot of sheep in this that only run 10 or 11000 pounds per car?

A. No, not a lot of them. We took in this the stuff that came to Chicago market direct. Very few of our sheep come, none of them, they are all unloaded at La Fox.

Q. The report referred to, the stock yards' company report of Chicago showed that you brought into Chicago over a million head of sheep?

A. I do not dispute that but I say they came here from La Fox, they all stop there and feed, and we put into this statement, or at least aimed to, that stuff which moved through without stopping in transit anywhere. The sheep are eliminated.

Q. Well, in taking your averages of how much your stock weighed at Chicago, didn't you take the Chicago weight for it?

A. We took the Chicago weight?
Q. Yes.
A. We took the weight that we collected freight on, cattle and hogs.
Q. Well, didn't you collect freight on the sheep here?
A. Yes, sir, but I say we abstained—we took into this what would ordinarily move into Chicago in the Missouri River zone from those stations that we talked about yesterday.
Q. You mean, then, you didn't take the average of all the live stock that came to Chicago?
A. I didn't take the sheep into consideration, no.
419 Q. Well, you say you took that coming from that Zone?
A. Yes, sir.
Q. How did you get at the average number of tons per car?
A. Well, we took all the cars and took all the tons that came from that 23½ cent rate zone and divided one by the other.
Q. Only that that came from that zone?
A. That is it. There may be some few sheep in there, but there are very few in it, there are very few native sheep that are bred out there, I do not recall any.
Q. So you don't take your average live stock loading to get at the number of tons you have given here, but only the average from that district?
A. Which would be the average from that district.

Mr. DAWES: That is what we are dealing with, Mr. Cowan.

Mr. COWAN:

Q. Have you got the data?
A. No, I haven't got that.
Q. Did you go through the billing and select out the stuff that was shipped?
A. We had the auditor do that.
Q. You say you haven't it here, but you have somewhere those figures from which you computed this?
A. Yes, sir.
Q. Can you furnish them, Mr. Gardner?
A. Yes, sir, with pleasure.
Q. I would like for you to do so please. Now, we have
420 the average tare, weight of car, 18.50 tons. Did you take that from your own figures or from the Western Weighing Association figures?
A. Well, we took the Western Weighing Association and our own figures and compared them and arrived at that result.
Q. The definite actual record that furnishes that evidence is with the Weighing Association?
A. Yes, sir.
Q. In estimating the amount of your expenses I see you put loss and damage in this estimate at $1.15 a car?
A. Yes, sir, I left out some 21 or 2 thousand dollars and give that the benefit of the doubt as to claims that were not paid in connection with the Chicago market.

Q. Your claim is that you have a definite record of just how much you pay on live stock claims for every year?

A. Every year. It would be a thirty days' job to go through the record, though. We handle some five or six thousand claims, you know, every day, of one kind and another.

Mr. LYNDE: A day?

A. I meant letters, not claims. But he has five thousand letters a day.

Mr. COWAN:

Q. I am talking now about his records of payments. His records of payment do not require any such work. You have estimated in your cost two cents a mile on every car of live stock?

A. We have.

421 Q. Clear back to the Missouri River?

A. Yes, sir.

Q. Has that ever been regarded and considered as an actual cost?

A. It always has in my mind.

Q. Well, do you claim that it cost you $3.40 per car of live stock for carrying the drovers and return transportation?

A. I certainly do.

Q. It cost that money to carry them back?

A. Yes, sir. I do not go on the hypothesis that because we have got a train running and you put fifty or sixty drovers on there, that it don't cost you anything to carry them. You are under all the responsibility that attaches to a man who buys a first class ticket at three cents a mile.

Q. Now, you put the bedding of the stock car at a dollar?

A. Yes, sir.

Q. That is the cost of the material that you put there. Now, how do you get at the fact—you say *you cost it* you a dollar—how do you arrive at that fact?

A. I explained all that pretty fully yesterday, I think, in my testimony. I will review it again, if you like.

Q. How far do you have to haul this stuff?

A. All the way from ten to fifty miles.

Q. And how many stock cars will a car load of that stuff furnish bedding for?

422 A. It depends on the size of the car that you load the stuff in originally. Some of the big gondola cars will haul thirty yards. A flat car might take only seven or eight yards.

Q. You figure on the basis of two yards to the car?

A. Yes, sir, a yard and a half to two yards in a thirty-six foot car.

Q. And by using the estimate which I have called over, including $1.75 for cost of maintain-g stock yards, water facilities and tracks and their depreciation, $1.75, you give a total expense of $16.05?

A. Yes, sir, but that does not comprise everything by any manner of means. There is another matter of water that ought to go in there that I refrained from putting in. We have at every watering plant in the State of Iowa a contrivance for watering hogs, some 55 or 60 per cent. of the live stock out of Iowa is hogs. We run a pipe line on both sides of the main track, three or four hundred feet

from the water tank and we put in a stand pipe that works with a valve, and every time there is a stock train goes through there there is a man stands on either side and puts water in to the hogs, and that is done in the summer time every time we come to a water tank.

Q. Now, what portion of the year do you water hogs?

A. During the summer months.

Q. What portion of the year is the large hog movement?

423 A. Why, I suppose it is about equally divided. I never looked to see that. It is not as irregular as the range cattle business.

Q. That will be shown by the Stock Yards report. That will show whatever it is?

A. Yes, sir. Those plants, though, cost $50 to $75 apiece. I have not referred to them anywhere.

Q. Now, in moving your live stock from Bellefourche territory, take the Black Hills District on your road?

A Yes, sir.

Q. The difference in your rate, if they come on from the Missouri River, is 12 cents a hundred pounds, is it not?

A. I think probably. You know better than I do. I think the rate is 48 cents clear through.

Q. And thirty-six cents to Omaha?

A. Yes, sir.

Q. So the difference would be 12 cents?

A. Yes, sir.

Q. Now, if this stock train cost as much as you claim it does, to bring it on to Chicago from the Missouri River, then wherever you haul on that 12 cent rate from the Missouri River on to Chicago you are actually losing money?

A. Yes, sir, I think we lose money on most of the live stock business.

Q. You actually lost money?

A. Yes, sir, even at the 23½ cent rate.

Q. Do you know of any other large volume of freight that

424 pays you as much revenue per car mile as the live stock pays you on these local rates from Western Iowa points to Chicago?

A. Do I know of any other thing that pays us as much per mile?

Q. And that furnishes you as much volume of traffic?

A. Yes, sir, I should say that grain did.

Q. How much grain do you have to load to the car in order to get as much revenue as you do out of live stock?

A. Well, let's see. The rate on grain I think is 17 cents, isn't it?

Q. You ship grain from the Missouri River here at 11 cents?

A. Not to my knowledge.

Q. How much, 12?

A. I think the rate is 17 cents.

Q. Do you know how much grain you load to the car?

A. Yes, sir, we generally load, we have eighty thousand capacity box cars and load them generally I think to 100 or 110 per cent. of the capacity of the car.

Q. Have you ever taken occasion to see how much your total grain movement through Mississippi River points averages?

A. Oh, I have at odd times, not recently.

Q. Mr. Mahoney keeps definite figures on that, does he not?

A. He does.

Q. Now, the average load on your system per car is only about 13 tons?

A. 13.3 tons.

Q. That would indicate there could not be any great
425 quantity of the very heavy loading that you speak of?

A. Well, yes, it would indicate that we had some very heavy loading and that we had some very light loading. The Northwestern Railroad is somewhat peculiar in that respect. We start out of Chicago every day some four or five hundred car loads of merchandise from these freight houses that only average about eight tons to the car and that has very much to do with the average loading. On the other hand, we have a very big ore business up in Michigan that will average 35 or 40 tons to the car, but the light loading predominates.

Q. In order to earn as much per car load on the grain per mile as you do on the live stock the grain has to be loaded very much heavier than live stock that you move out on the 12 cent rate?

A. Well, I don't know about the 12 cent rate. I was not committing myself on that.

The COURT: Haven't you got the rates there, haven't you got the figures there as to what is the rate?

Mr. COWAN: I have them right before me.

Q. The proportional rate from the Missouri River to Chicago is composed of nine cents to the Mississippi River and three cents to Chicago?

A. We are not discussing the proportional rate on live stock. We are discussing the 23½ cent rate, and on that same basis grain would be 17½ cents.

426 Q. Practically all the grain moved from the Missouri River moves here on the basis of the proportional rate?

Mr. LYNDE: All except that which is shipped from intermediate points, Mr. Cowan, it is very much live stock in that respect.

Mr. COWAN:

Q. That may be from intermediate points, more than this proportional.

Mr. LYNDE: That is all we are dealing with here, is intermediate points.

Mr. COWAN: I have not examined whether you do charge more than the proportional from intermediate points. I haven't a tariff before me. I do not make an assertion of that kind.

Q. Now, in the case of live stock you figure that you haul 845 gross tons?

A. Yes.

Q. And in case of packing house products in your comparison you are figuring that you haul 1200 gross tons?

A. Yes, 1220 I think.

Q. You are estimating 35 cars of packing house products?

A. Well, it may not be 35 cars, exactly. That is as near as you can make up a statement of that sort, I think. You can figure it most any way. That is about as close as we can come to it.

Q. Well, you can figure it by making some division?

A. Yes.

Q. You say you can return 60 empty cars, live stock cars
427 and 45 to 50 packing house product cars?

A. I said 50 refrigerators, I think, and 60 live stock cars. But you should bear this in mind also that the 50 refrigerators go through and the 60 live stock cars may distribute themselves somewhere else.

Q. They do not have to be hauled as far?

A. They do not have to be hauled as far, although the locomotive has to go as far, and the train crew.

Q. Now, if you move the live stock and packing house product at the same rate of speed, isn't it a fact that the weight behind the engine is the test as to the cost of hauling it, the difference in cost?

A. No, sir. Speed has got just as much or more to do with it than the weight of the train.

Q. I say, assuming that you are hauling it at the same rate of speed?

A. Yes, sir.

Q. Assuming that you haul it at the same rate of speed, it certainly would cost more to haul 1200 gross tons than it would 845 gross tons.

The COURT: He answered that yes.

Mr. COWAN:

Q. Is it not a fact that you have what is equivalent to regular stock trains that load in that district of Iowa in the morning to reach the next morning's market at Chicago, live stock?

A. Why, if you would call "regular" something that occurs once a week or once in ten days or once in two weeks, yes, but
428 not every day, no. We have, I think—there is one schedule train out there that does pick up some live stock, but very few shipped on that particular train.

Q. You have on Sundays several of those trains, do you not?

A. Not that are scheduled, but that do run on a certain schedule.

Q. You know they are going to run?

A. We know they are going to run, yes, sir.

Q. Do not those trains load in the morning in Western Iowa for the next morning's market in Chicago?

A. No, most of them load the night before. They will commence loading at 10 or 11 o'clock or midnight, then instead of arriving in Chicago in the morning, they get in here early in the morning—I think I know what is in your mind if you will permit me to go on without questioning you if you want me to?

Q. Yes, go ahead.

A. I heard you ask somebody the other day whether it was not the fact that the time on live stock has been lengthened six hours from Iowa or something of that sort?

Q. Yes.

A. And I want to say that that is not the fact, but we have required the shippers out there, most of them, to load their live stock from three to four and five hours earlier than they used to. We make the same or better running time into Chicago than we
429 ever used to make. The reason for that was not to secure a lower rate of speed on live stock but was for the purpose of getting the live stock in here so as to make the market. And where the Northwestern Railroad under the old regulations, used to have from 20 to 25 per cent. of the live stock arrive here too late for the market, that is, unloaded after eight o'clock in the morning, by changing the loading—and this is done with the approval of the shipper—we *not* get practically all of the stock in here on time. We do not have two per cent. that is too late for the market. And it is a fact that there used to be a train in Western Iowa, the number of it is 132 and it left Missouri Valley at half past five in the morning and was due here the next morning at five o'clock, or something, at the Stock Yards, and we were invariably late with it because we could not make the time, and those people now, the great majority of them load the night before, with the exception of some who may unload and feed at Clinton.

Q. You mean they load Sunday night and get in here Monday morning?

A. I mean they load Saturday night late and commence getting in here about midnight. The idea of our changing our time was to have our arrivals commence Sunday night about midnight and be through with them about five o'clock in the morning instead of commencing to arrive at five o'clock in the morning and get
430 through at ten o'clock.

Q. Well, having heard those shippers testify in regard to it, Mr. Gardner, was the occasion of my question?

A. Yes, sir.

Q. I did not understand that you had any trains of live stock that you claimed to run here in quicker time than your schedule on these dressed meat trains. If you take the leaving time from Boone, for example, and the arriving time at Chicago, is it a greater length of time or as great as is the schedule on the dressed meat or packing house train?

A. I should not agree with you on that. I think the majority of the stock trains will show a very much greater running time. You have got to make with your stock trains an arrangement, a concession of two hours from the terminal yards to get over to the Stock Yards in, and as I have stated before, we have 20 or 25 stock trains in line, and we have got to run the head trains as fast as we can possibly run. We only have two main tracks on the Galena Division which enters Chicago. We are building a third one. I do not think that applies to the Burlington Road, I think they have three main tracks to Aurora. I don't think they have to run stock trains at as high speed as we do.

Mr. LYNDE: You said a majority of the stock trains show
431 a much greater running time, you mean less, do you not?
A. I mean less, a greater rate of speed.

Mr. COWAN:

Q. Now, the statement you are to make up, giving the time of leaving Boone and the time of arriving here, that will show definitely the relative time it takes those trains to get here?

A. That will show definitely that, but that does not show at all by any manner of means, it does not show this stock that comes into Boone from the Maple River country and the Sioux City country, and all up through there, where we sometimes bring in 150 and 200 cars of stock, and where it is further from Boone to those points although the rate is the same, than it is from Boone to Council Bluffs. There is a whole lot of things that that will not exhibit.

Q. Well, you claim, then, that you actually run your packing house product train, that it takes it a greater number of hours from Boone to Chicago than it does a live stock train from Boone to Chicago?

A. I actually claim that the rate of speed of the packing house trains per hour is slower than the average live stock train is per hour.

Q. But I am trying to get at the time it takes from Boone to Chicago, the comparative time.

A. I appreciate what you are trying to get at, but there
432 is a very great difference between what I think you want, and what I am perfectly willing to give you, too, because whilst the hours might show up on an equality between Boone and Chicago, it might show up that the live stock train between certain stations run just as fast as it could run for a distance of a hundred miles, probably, whereas, the dressed beef train would come along materially slower. There is one other item about live stock trains. We have to stop to permit the drovers to feed sometimes. That is something else that is not in there. We have got a restaurant at Clinton that cost $2,000 to put up, solely and alone for stock men, and I w-nt to verify what the gentlemen preceeding me on the stand said to the effect that we have two or three men there Sunday nights and Tuesday nights to take care of the stock men and guide them over to the restaurant and see that they get back without being knocked down and run over.

Q. Don't they pay for their meals?

A. Yes, sir, but we have to give the rent of the restaurant free and guarantee a certain profit to the man who keeps it and we are losing money on it.

Q. If you lose money in the transaction, why do you do this?

A. I think that is explainable, and I mean what I say about losing money in it, too.

The COURT: You are just finding that out, that you are
433 losing money?

A. No, sir, I have known it for some time, and I am glad of this opportunity to air my views.

Mr. LYNDE: Go ahead and explain with regard to it.

A. I believe we lose money in the live stock traffic and I believe every man who goes into it intelligently and faithfully will discover that at the end. My testimony here is not based on being coached or having rubbed up against this thing for two or three days. I have been at it four or five years, and the conclusions I have come to are the result of my investigations and study for four or five years, too, for the reason that the live stock business on the Northwestern Railroad, as I said before, has always been looked upon as expressing the reputation of the road. If you have the live stock trains on time, you are a good manager and everything, and all is well and good, but if you do not do so, it is otherwise. Now, there is no one business in the State of Iowa or Nebraska that so many people are engaged in as in the loading of live stock. There is no one thing that probably brings as much cash at frequent intervals into the State of Iowa as live stock sales do, it is a cash transaction, it is a legal tender. The first question that a man asks his neighbor in an interior town in Iowa in the morning is not about the treaty between Japan and Russia, or the
434 municipal ownership of street railways in Chicago or various other issues that we are interested in, but it is "What kind of a market did you strike, and what kind of a run did you have?" Now, if you did not strike a good market, he criticises the run, anyway, but if he strikes a poor market and has a good run we are not able to prove that he had a good run, and if he strikes a good market and has a good run in addition he feels good all over and the reputation of the road and almost every other railroad in the West is dependent on the time that they make with their live stock, and the humor that the live stock men are kept in. And I have had occasion to go to the legislature several times in Iowa to discuss this identical matter and for that reason the railroads are very anxious to perform the live stock service in an entirely satisfactory manner. It does not bankrupt them because they may not make a profit out of it. The live stock on the Northwestern Railroad is three per cent. of all the tonnage they haul. That is all, three per cent. of it, it is about 65 per cent. of the general reputation of the railroad in the States of Iowa and South Dakota and Nebraska, and they started in soliciting live stock a good many years ago.

The COURT: The stock men are in the legislature, is that the idea?

A. The stock men are in the legislature but I refrained
435 from saying that.

The COURT: You have been catering to them too much and to public opinion, is that the idea?

A. I do not say that. We do not cater any more to the stock man who is in the legislature than we do to the one who is out. Many of the bankers are in the stock business and many of the farmers are in the stock business and many other people are in the stock business, but it is the live issue in the State of Iowa.

Mr. COWAN:

Q. Notwithstanding that, Mr. Gardner, it seems to have resulted

that, while the packing house product and dressed meat rates are higher everywhere else in the country except between the Missouri River and Chicago and St. Paul and Chicago, the farmer did not at least exercise enough influence to get his rate down as low as the packers did?

A. Well, I don't understand——

Q. Well now, what is the occasion of the packing house rate being put down so low if the farmer had all this influence with the live stock rate?

Mr. LYNDE: Has the farmer made any complaint of the live stock rate, Mr. Gardner?

A. I was just going to say——

The COURT: Let him answer one question at a time. Answer Mr. Cowan.

Mr. LYNDE: Very well.

436 A. I will answer your question. I met the Association—well, the Corn Growers' Beef Association, Mr. Ames, I think, is the President. You know him. And I have yet to have the first one complain about the rate. I see Mr. Ames frequently. It is never the rate they complain of. I never heard one of them compare the rate between dressed beef and product and live stock. They may do it elsewhere but they do not with me. I might say here that the rate on beef product is too low. I do not claim that we are ma-ing any money out of it.

Q. Do you claim that the dressed beef rate ought to be lower than the live stock rate?

A. No, I do not make any claim about that at all. I have not studied it at all. I think both rates are too low.

Q. Now, if you lose money on the live stock rate from the Missouri River here, or 150 miles this side, about that of 23½ cents, how do you account for it that for years the railroads have been carrying, and yet carry, live stock from here to New York, double the distance, for 28 cents?

A. Well, because they do not have half the hullabaloo and hurrah, boys, about live stock between here and the seaboard as they do between here and Omaha, nothing like it. They do not carry any men with the stock trains to take care of it, as I understand.

437 These exporters move most of the stock. They tell me they carry very few men with it.

Q. Don't they make faster time?

A. I think not. I think they take about 60 hours going from here to New York, something like that.

Q. And they have to pay a lighterage charge in New York out of that rate?

A. I do not know about that, I am not posted on New York.

Q. Are there any factors in the matter of transportation aside from the men, you say they don't carry men with the train and back, are there any factors aside from that that would require a different adjustment between the packing house product and dressed meat on one part and live stock on the other in the Missouri River to Chicago trade and the Chicago to New York trade?

A. Well, I do not know that I am sufficiently well posted east of

Chicago to answer that question intelligently. I have some general knowledge of the way they do things, but not in detail.

Q. Do you know what it cost you per car load of live stock from the Missouri River to Chicago?

A. Do I know what it costs per car load? No, I cannot answer you that accurately. There are some of the costs on that statement.

Q. Do you know what it costs you on any traffic?

438 A. No, I cannot tell you what it costs on any traffic particularly. We are getting closer to knowing that every day, though, I fancy.

Q. Do you know, Mr. Gardner, whether or not the relation of the rates on packing house products and dressed meats were submitted to arbitration by all of the railroads, trunk lines, between Chicago and New York, and that by arbitration, they fixed the relation of those rates at 28 cents for live cattle and 45 cents on the dressed product.

Mr. SEVERENCE: I object to that as incompetent and not cross-examination.

The COURT: The objection is overruled. Let us see what he knows.

A. I do not know.

Mr. COWAN: Do you know of any other place in the country, where the rates on products and dressed meats is lower than the live stock rate, except that in controversy in this case?

A. I have not looked that up.

Q. In the transportation of dressed product from Omaha, south and west, or north and west on your lines of road beyond the Missouri River, isn't it a fact that you charge more for the dressed meat than you do the live stock?

A. I cannot answer that without reference to the tariff.

Q. Are there any differences in the conditions of transportation over there relatively between the two classes of commodities, different to what it is on this side of the river?

439 A. Well, there might be in different localities, different conditions. In a similar locality, with similar grades and all those things, probably it would be identical. Of course, you must bear in mind that the cost of fuel and supplies, when you get west of the river, is added to.

Q. But not any more for hauling dressed meat than for hauling cattle, of course?

A. No, but I say a ton of coal costs a good deal more after hauling it out there four or five hundred miles, than it does right adjacent to the mines.

Q. How many trains of dressed meat do you haul a week out of Omaha to the east?

A. To the east? We do not have any trains a week. The statement shows that we only had 31 or 32 hundred cars in twelve months. We are not playing favorite there on that business.

Q. Now, you speak of the 35 cars in trains that carried dressed meat? How are you able to ascertain that if you do not have any trains of dressed meat?

A. I said on the start that we had estimated that, that we did not have any trains. I think you will find in the reporter's notes that I have prefaced that.

Q. This is a statement of actual transactions in hauling the actual number of cars?

A. Yes, sir, as near as I could make out.

Q. But it is an estimate transaction in hauling dressed meat?

A. Yes, sir, giving it the benefit of the large tonnage.

Q. Mr. Gardner, I believe you say that this statement,
440 that there is a little statement made at the bottom that the clerk added there?

A. I am perfectly agreeable to cutting that off. I will do that myself for you when I leave the chair.

Examination by Mr. LYNDE:

Q. Mr. Gardner, do you know of any complaint ever having been made to the Chicago and Northwestern Railway Company by anybody as to the rates on live stock, except these commission men here in Chicago?

A. I have never heard a complaint.

Q. You never have heard a complaint from any shippers in Iowa?

A. No, and I see them frequently, and know a great many of them.

Q. Or as to the relations between rates on live stock and rates on dressed beef, and packing house products?

A. Never. I never discussed that with them.

Q. You have never heard the question raised by any of them, have you?

A. I have not.

Q. You do not profess to be an expert on rates, do you, Mr. Gardner?

A. I profess to know nothing about them whatever.

Mr. COWAN: It wouldn't do any good if they made a complaint, Mr. Gardner. You see no money in the business.

Mr. LYNDE: How do you know?

The COURT: I guess that is all. Call your next witness.

441 WILLIAM E. KEEPERS, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. Give your full name to the reporter?

A. William E. Keepers.

Q. What is your occupation?

A. I am general freight agent for the Northern and Western Lines of the Illinois Central Railroad.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. A little over thirty years.

Q. With what railroads have you been connected, and in what capacities?

A. I have been with the Memphis and Ohio Railway, the Louisville and Nashville and the Illinois Central.

Q. During what part of that period have your duties had relation to the making of freight rates, that is, what territory?

A. Well, on the Illinois Central, for the last twenty years, or somewhat more, twenty-two or three years.

Q. Please file as Exhibit Number 1 of your testimony a statement showing correctly the rates in cents per 100 pounds now charged on cattle, hogs, packing house products and fresh meat re-

442 spectively, in carload, to Chicago, Illinois, from the following points, or such of them as your line operates from, namely: Kansas City, Missouri; St. Joseph, Missouri; Atchison, Kansas; Leavenworth, Council Bluffs, Iowa; Omaha, Nebraska; South Omaha, Nebraska; Nebraska City, Sioux City, Iowa, St. Paul or South St. Paul, Ottumwa, Iowa, Des Moines, Marshalltown and Cedar Rapids, respectively. Indicate on the statement by prefixing the letter "A" to such rates as apply on all shipments which are destined to points east of the Illinois state line, and by prefixing the letter "B" to such rates as apply on shipments originating beyond the point of shipment, and by prefixing the letter "C" to such rates as apply when shipments originating beyond, are destined beyond the Illinois and Indiana state line.

A. I will. (Witness produces paper.)

Q. You file that as an exhibit, do you?

A. Yes, sir.

(The document produced by the witness was marked "Keeper's Exhibit No. 1" and filed with the court.)

442½ EXHIBIT No. 1.

Rates are in cents per 100 pounds.

To Chicago, Ill. From	Cattle.		Hogs.	Packing house products.		Fresh meats.	
Kansas City, Mo...	23.5	B–20 C–18.5	23.5	20	A–18.5	20	A–18.5
St. Joseph.. " .							
Atchison, Kan....	.....						
Leavenworth, "							
Council Bluffs, Ia..	23.5	.....	23.5	20	A–18.5	20	A–18.5
Omaha..... Neb.							
So. Omaha.... "							
Nebraska City, "							
Sioux Citv, Ia.....	25	... .	23.5	20	A–18.5	20	A–18.5
St. Paul.....Minn.	25	B–15.5 (See Note.)	27	15.7	A–14.6	17	A–15.7
So. St. Paul .. "							
Ottumwa.... Ia.	22	.....	21	16	.....	16	
Des Moines... "	22	.....	23.5	18.5	.....	18.5	
Marshalltown, "	22	.....	21	16	.....	16	
Cedar Rapids, "	21	.....	18.5	13.5	.....	13.5	

A.—Applies on shipments destined east of the Indiana - Illinois State Line.
B.—Applies on shipments originating beyond.
C.—Applies on shipments originating beyond and destined to points east of the Indiana - Illinois State Line.
NOTE.—Effective September 13th, 1905, rate will be 20 cents.

Exhibit No. 1, W. E. Keepers.

Q. State whether the rates on cattle and hogs, set forth in said Exhibit No. 1, are in your opinion just or unjust, reasonable or unreasonable, and state fully your reasons for any opinion you may express.

A. Well, I consider the rates unreasonably low.

Q. What are your reasons for that opinion?

A. They do not yield a fair compensation for the service performed.

Q. Are they in any way affected by competition?

A. Entirely so; otherwise they would be much higher.

443 Q. Please file as Exhibit No. to your testimony a statement for the year ending June 30, 1905, showing the total freight earnings of your Company, the earnings of your Company for cattle, the earnings of your Company from hogs, the earnings of your Company from packing house products, and the earnings of your Company from fresh meat.

(Witness produces statement, which is marked "Keeper's Exhibit No. 2," and filed as part of the evidence herein.)

443½ EXHIBIT No. 2.

For the year ending June 30th, 1905:

(*a*) Total freight receipts of the Illinois Central Railroad	$32,607,922.17
(*b*) Receipts from cattle	528,103.81
(*c*) Receipts from hogs	453,317.22
(*d* & *e*) Receipts from packing house products, including fresh meat	591,802.40

The records of this Company do not show packing house products and fresh meat separately.

Exhibit No. 2 to W. E. Keepers.

A. You do not ask me to read that?

Q. No, do you file it?

A. Yes, I do.

Q. How does the amount paid by your Company for loss or damare to cattle and hogs, and for injuries to persons in charge of cattle and hogs, compare with the amount paid by your Company for similar claims in regard to the total freight carried?

A. For the year ending June 30, 1905, we paid for loss and damage to cattle and hogs, and injuries to persons in charge of cattle and hogs, $39,715.50. The total amount of loss and damage claims for freight is, $645,509.04.

Q. Are the through rates on cattle and hogs from the points of shipment in the territory in controversy in this case to the points of final destination greater or less than the sum of the local rates between said points where the through line is made up of two or more railroads?

A. I am afraid I did not get that question, Mr. Baxter.

444 Q. Are the through rates on cattle and hogs from points of shipment in territory affected to points of final destination greater or less than the sum of the local rates?

A. They are less than the sum of the local rates when made up of more than one line, made up of two or more lines.

Q. What is the established minimum carload rate for cattle and hogs respectively on your road, and how does the actual loading of cattle and hogs on your road compare with that minimum?

A. It depends on the size of the car. Our standard car is 36 feet in length, and the minimum weight on cattle is 22,000 pounds, on hogs, 17,000 pounds. The loading of cattle is about a thousand pounds more, perhaps runs a little higher than the minimum, not very much on the hogs, about the same as the minimum, it might run a trifle higher, but not much, sometimes a little under.

Q. Do you mean it is up to the minimum?

A. They usually try to load to the minimum. It might run a little bit under, sometimes, or a little over on hogs.

Q. Will you please file as Exhibit No. 3 to your testimony a statement showing a comparison between the revenue per car realized by your road on cattle and hogs in carloads and the revenue per car realized by your road on wheat, tropical fruits, vegetables and classified freight in carloads, for the same distances, selecting for said comparison some fairly representative portion of your

445 road over which such kinds of traffic actually move.

(The witness here produced a statement, which was marked "Keeper's Exhibit No. 3" and filed as part of the evidence in this case.)

EXHIBITS

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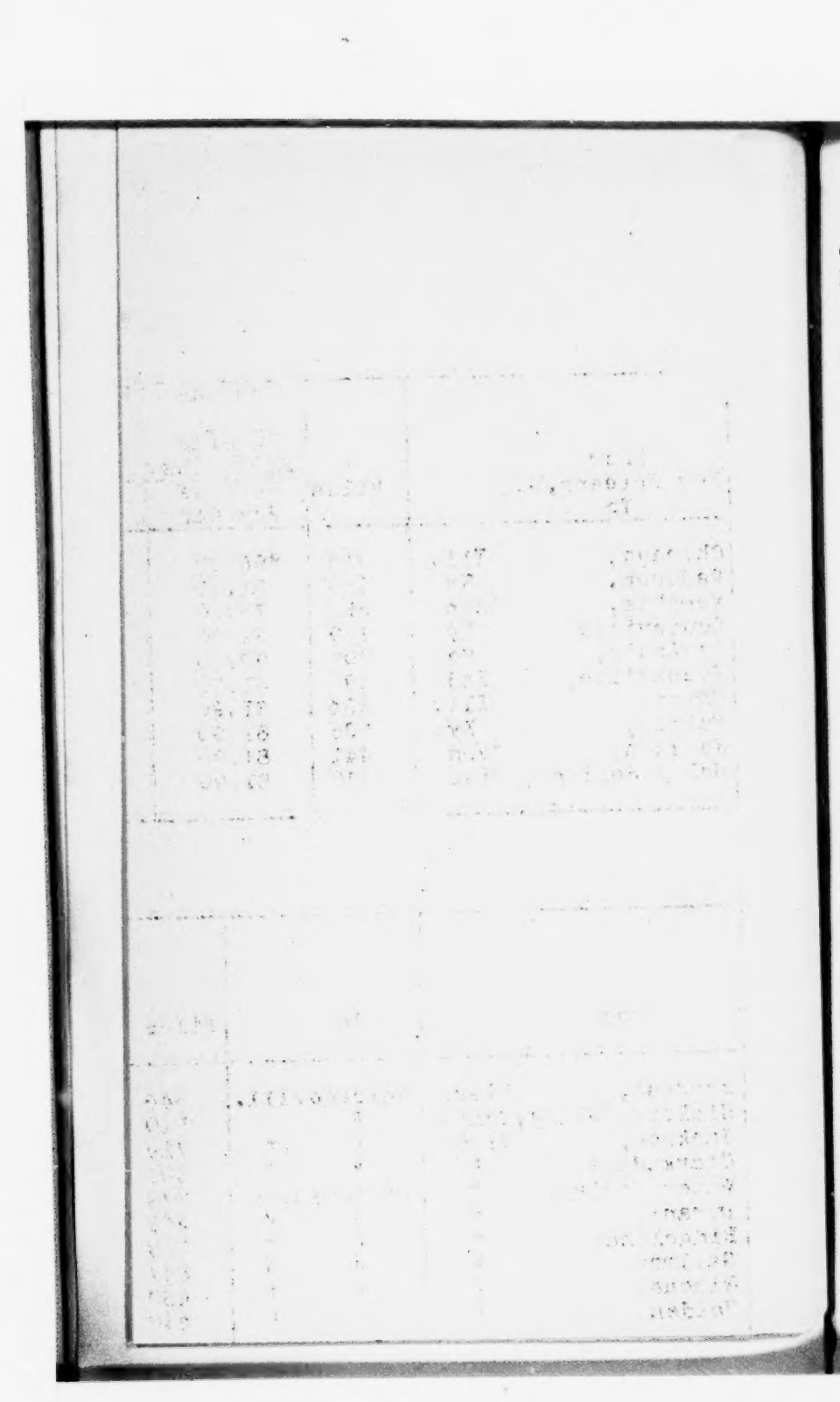

The COURT: What is the substance of that?

A. It shows the rates per car first from Omaha, Nebraska, to Chicago, 516 miles. The rate on cattle on the basis of 22,000 pounds per car,—We take that in making our estimates.)

Mr. BAXTER:

Q. We can't hear you, Mr. Keepers. You will have to speak louder.

A. I say, taking the first item here, Omaha to Chicago, on cattle and hogs, 516 miles, by our line, into South Omaha, the loading is 22,000 pounds to the car on the regular basis of the rates, the rate would be $51.07; on hogs, $17,000 pounds to the car, $39.95 to the car. The next item is the rate on wheat. A car of wheat loading 70,000 pounds would be $119.

Q. That is between the same points, Omaha to Chicago?

A. The same points, yes, sir. A car of corn, 112,000 pounds. A car of pig iron—that would be in the reverse direction, $90.20, 62,000 pounds—Cast iron pipe, 38,000 pounds, $57. I have taken correspondingly, taken rates on these articles from same town. I have given rates on live stock from Council Bluffs, Cherokee, Sioux City, Sioux Falls, Denison, Iowa, Storm Lake and Fort
446 Dodge. The comparisons run along pretty much the same. I might take Fort Dodge, 375 miles, the short distance, $51.70 on cattle; $39.95 on hogs; $119. on wheat; $112. on corn; $84.94 on pig iron; $53.20 on cast iron pipe.

The COURT: What is the difference in weight?

A. The weight for loading of wheat is 70,000 pounds; corn, 70,000 pounds; pig iron, 62,000 pounds; cast iron, 38,000 pounds. We could load more wheat and corn, and also pig iron, in cars, but we have taken the fair average weight. The cast iron pipe could be loaded much heavier than that, but we have taken the average weight of 38,000 pounds.

Q. How does the profit there compare with the weight?

A. The profit, I should think, would be a great deal more in hauling the cheap freight than it will on the expensive freight and on live stock. I have taken the other items here. Take the rates on yellow pine lumber, which comes from Mississippi and Louisiana. I have taken similar distances, taken Zachary, Mississippi, to Paducah, Kentucky, 518 miles. That corresponds with the Chicago-Omaha rate. The rate on Yellow pine lumber, which averages 47,000 pounds to the car, is $84.60. The rate from Vicksburg to East St. Louis, 537 miles, is $94. That is made to compare with the rates from Sioux Falls to Chicago, 547 miles, the rate on cattle being $55. and on hogs $51. I have made up various other illustra-ions, I do not suppose it is necessary to read them all.

Recess was here taken until 2 o'clock of same day, Wednesday, September 20, 1905.

447 WEDNESDAY, *September* 20, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon WILLIAM E. KEEPERS, resumed the stand for further direct examination by Mr. Baxter.

Q. Just before adjournment you filed, as an exhibit to your testimony a statement showing a comparison between the revenue per car realized by your road on cattle and hogs, in carloads, and the revenue per car on fruit, vegetables and classified freight per car load for the same distance. I will ask you to give the same comparison between the rates on cattle and hogs as set forth in your exhibit No. 1, with the rates charged by your railroad and by other railroads for the transportation of cattle and hogs, their various points of shipment and their points of destination, and the distances and other matters here relatively considered. Have you compiled a statement of that kind, the rates on live stock for similar distances?

A. I did not file that other exhibit that you marked No. 3.

Q. I don't care to take up the time of the court in reading that, all of your comparison.

A. No. Omaha to Chicago, 490 miles by the short lines,
448 the rate is $51.70 per car; on cattle per car, 36 feet long, $39.95 on hogs. A distance of 488 miles, from Thummel, Nebraska, to St. Paul the rates are $70.40 on cattle and $62.90 on hogs.

The COURT: How is that, from Thummel, you say to St. Paul?

A. Yes sir. The distance is 488 miles, practically the same from Omaha to Chicago. Another point is Atchison to Chicago, that is $51.70 per car on cattle and $39.95 on hogs. From Silver City, Nebraska, to St. Paul, a distance of 494 miles, $70.40 and $62.90.

The COURT: Well, there are others of the same nature?

A. Others of the same nature, yes sir.

Mr. BAXTER: Just file that as an exhibit to your testimony. Don't take the time to read it, but mark it No. 3¼.

(The paper referred to is marked Keeper's Exhibit 3¼ F. B. D.)

448a EXHIBIT No. 3½, W. E. KEEPERS.

Miles.	To Chicago From—	Per 36 ft. car. Cattle.	Hogs.	Miles.	To St. Paul From—	Per 36 ft. car. Cattle.	Hogs.
458	Kansas City...	$51.70	$39.95	458	Columbus...Neb.	$68.20	$61.20
469	St. Joseph.....	51.70	39.95	471	Silver Creek, "	70.40	62.90
491	Atchison.....	51.70	39.95	494	Central City, "	70.40	62.90
499	Leavenworth..	51.70	39.95	504	Chapman... "	70.40	62.90
487	Co. Bluffs.....	51.70	39.95	488	Thummel... "	70.40	62.90
490	Omaha.. ...	51.70	39.95	488	Thummel... "	70.40	62.90
494	So. Omaha ..	51.70	39.95	494	Central City, "	70.40	62.90
496	Nebraska City.	51.70	39.95	497	Paddock.... "	70.40	62.90
510	Sioux City....	55.00	39.95	510	Lockwood... "	73.70	62.90
409	St. Paul.....	55.00	45.90	408	Fremont.... "	67.10	51.00
414	So. St. Paul...	55.00	45.90	415	Ames..... "	67.10	52.70
292	Ottumwa.....	48.40	35.70	291	Oasis .....Iowa.	48.40	37.40
358	Des Moines ...	48.40	39.95	364	Burlington.. "	55.00	45.90
289	Marshalltown .	48.40	35.70	289	Elmira..... "	48.40	37.40

Miles.	To Kansas City From—	Per 36 ft. car. Cattle.	Hogs.	Miles.	To E. S. Louis From—	Per 36 ft. car. Cattle.	Hogs.
456	Coolidge, Kas.	$56.10	$52.70	459	Goodman...Miss.	$68.00	$61.00
468	Byron .. Colo.	58.30	56.95	472	Vaughan.... "	68.00	61.00
484	Morse.... "	58.30	58.65	489	Sloan ..... "	70.00	63.00
502	Martin... "	60.50	60.35	497	Madison.... "	72.00	65.00
484	Morse.... "	58.30	58.65	487	Canton..... "	70.00	63.00
489	Lamar... "	58.30	58.65	487	Canton..... "	70.00	63.00
497	Prowers.. "	60.50	60.35	493	Calhoun ... "	70.00	63.00
497	Prowers.. "	60.50	60.35	497	Madison.... "	72.00	65.00
508	Coddoa .. "	60.50	60.35	509	Jackson ... "	72.00	65.00
411	Larkin .. Kas.	56.10	52.70	410	Duck Hill... "	63.00	56.50
414	Shattuck, O.T.	64.90	64.60	414	Eskridge.... "	63.00	56.50
				294	Temple....Tena.	56.00	50.50
				360	Taylor.....Miss.	60.00	54.00
				290	HickoryVal.,Tenn.	54.00	48.00

The COURT: I assume that counsel will call the court's attention to these exhibits in the argument.

Mr. BAXTER: That is the idea, yes sir.

The COURT: I think that is a very good way to be used on both sides.

Mr. BAXTER: It will take a great deal of time to read those now.

The WITNESS: There are some others in other parts of the country.

449 Q. Excepting the rates on live stock from Chicago to New York and intermediate territory there and excepting the rate made by certain State Railroad Officials, do you know of any live stock rates anywhere in the United States for similar distances, that are any lower than the live stock rates charged in this case?

A. No sir, I do not, I have not seen any.

Q. Have you made some examination to see if you could find them?

A. Yes, I have looked over a good many tariffs or had them examined and reported to me by my office and with the exception of the rates east of here, which are on an abnormally low scale as we regard it, and the State rates that you have mentioned, I have found no rates that are not higher than those in question here.

Q. Have you recently had any complaint from live stock shippers as to the rates on live stock from the territory in question about the rates being too high?

A. No sir, I have not had a complaint as to the rates on live stock from that western territory for so long that I could not fix the time. Certainly not since the present basis of rates has been in effect.

Q. Have you had any complaint from shippers of cattle in Iowa or west of Chicago in regard to the relation between the—the present relation between the rates on live stock and the rates on the product.

450 A. No sir, the subject was never mentioned.

Q. Except in this case?

A. Except in this case. No shippers have ever mentioned it or brought it up or had anything to say about it.

Q. Have the rates on cattle and hogs been so high as to prevent the shipment of cattle and hogs or retard it, or have they been such as to promote the movement of cattle and hogs?

A. Why, they certainly have been sufficiently low to promot the business. It has increased. People have been in the business and staid in and others have gone in. It has been going right along without any diminution in any way that I can see. I think that the live stock business does not depend upon the rate conditions anyway. It would be an injustice to ourselves to have an abnormal scale of rates.

Q. I don't understand that you are connected with the Transportation Department of your road, you are in the Traffic Department.

A. Traffic entirely, freight traffic.

Q. So far as you have had an opportunity to observe, I will ask you in proportion to the service performed is the net revenue received by railroads for the transportation of cattle and hogs greater or less than the net revenue received by them for the transportation of ordinary dead freight.

A. It certainly is very much less.

Q. Have you compiled a comparison showing the revenues

451 per car of average loading derived by your company for cars loaded with coal and lumber or other low grade traffic compared with the revenue per car of average loading derived by your company for cattle and hogs between the same points or for similar distances? If you have, file that as Exhibit No. 3½.

(Paper produced and marked Keeper's Exhibit 3½ F. B. D.")

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Mr. BAXTER: I have just stated to the reporter that to preserve these exhibits he had better make them a part of the record, either of your Honor's record or mine.

The COURT: As he goes along.

Mr. BAXTER: Yes sir. Have you made that statement?

A. Yes sir.

Q. It is quite lengthy, is it not?

A. Yes sir.

Q. Well, with the permission of his Honor we will not take up the time to go into that.

The WITNESS: It is six pages and covers various parts of the country as well as that in the west.

Q. File as Exhibit No. 4 to your testimony a statement showing the rate charged by your company on cattle and hogs respectively to Chicago Illinois.

Also from such intermediate points on its line between St. Paul and Missouri river points on the one hand, and Chicago
452 on the other and also the rates on cattle and hogs at Sioux City, and South Omaha from stations on your road in Iowa.

(Paper produced and marked "Keeper's Exhibit No. 4? F. B. D.")

Q. As I understand it that exhibit shows the rates in both directions east and west from what are called in this case intermediate stations which lie between the Missouri river and Chicago.

A. Yes sir. From the south west to Chicago and from those same stations to Sioux City and to South Omaha.

Q. I will ask you whether those intermediate rates are in anywise subject to competition between the railroads?

A. Altogether, they are fixed by competition.

Q. Can you give us something like an accurate estimate as to the greatest distance that can be found in Iowa from any local station on any of those lines to a competitive station on some parallel or competing line?

Mr. DAWES: Do you understand the question?

A. I don't think I get that question.

Mr. BAXTER:

Q. Take any local station on your line in Iowa. How far is it from that station to the nearest competitive station on some parallel or competing line?

A. The greatest distance?

Q. Yes.

453 A. I should think offhand, 15 miles or eighteen. There might be some point where it would be 20 but I don't believe it is as far as that.

Q. Is there any difficulty at all in driving cattle or hogs a distance of 15 or 20 miles from one road to another?

A. No, they do it, half way between or more than half way between. All stock is competitive in the territory that we serve. That

is what diverts the business from one road to another without any particular loss to themselves.

Q. State whether a reduction of rates on cattle and hogs at these intermediate points on your lines between the Missouri River and Chicago would have any effect upon the revenue of your company and if so, what?

A. If the rates should be reduced to the basis of the packing house products and dressed beef rates from Missouri river, the effect on our line west of the river would be to affect a reduction of 3½ cents a hundred pounds on practically all of the live stock that we would be hauling to Chicago. I don't see that we could escape anything.

Q. That would amount to how much per annum if you have made the calculation?

A. On that basis I have made a statement. We hauled in a year to Chicago from points west of the Mississippi river of cattle, 53,986 tons; of hogs 42,269 tons. On the basis of 70 cents net ton re-
454 duction the reduction would be as a total $67,358.50 per annum based on the last fiscal year's operation.

Q. Now that is a direct loss resulting from the reduction of those particular rates. Would there be any indirect result or any indirect loss?

A. There is a considerable territory outside of Chicago that commonly takes the Chicago lakes, and where ther- are a good many shippers of live stock and more or less all through northwestern Illinois or northern Illinois and southern Wisconsin, they are shipping cows. It is a large dairy country. The reduction of the Chicago rates would be followed naturally with a reduction at those points. There would also probably be a reduction to the St. Paul and Minneapolis territory. That would af-ect us. Then it might be a reduction to other markets.

Q. Those indirect losses you have not figured up.

A. That we could not figure up because we could not tell where it would begin or where it would end, and it would be impossible to know the amount of the business.

Q. What terminal and switching charges are paid by your company on packing house products and fresh meats at St. Paul and Missouri river points?

A. The Illinois Central does not run to St. Paul. My understanding is that our business—we are in connection with the Minneapolis and St. Louis railroad which handles the business from St. Paul to our connection. My understanding however is that there is
455 a switching charge of $3.50 a car from South St. Paul to the M. & St. L. rails. At Sioux City there is a switching charge of $1.50 per car which we paid.

Mr. COWAN: I don't understand this. Let me get at what he is talking about. $3.50 and $1.50 on what sort of product.

A. $3.50 is the rate on the packing house product the switching charge at South St. Paul which the Minneapolis & St. Louis ra-lroad, our connection, pays. At Sioux City, which we reach, we pay $1.50 a car for switching the packing house products to our rails.

At South Omaha it costs $3.00 per car, $2.00 to the Union Stock Yards Company, and $1.00 to the Belt Line, which we have to use.

Mr. BAXTER:

Q. Are the same terminal and switching charges paid by your company on cattle and hogs coming from west of the Missouri river, to any of the Missouri river points?

A. We don't handle any further west than the Missouri river.

Q. Your line ends there?

A. It terminates at Sioux City at one point and Council Bluffs at the other.

Q. File a statement as Exhibit No. 5 of the number of cars of packing house products and fresh meat received by your company during the year ending June 30th, 1905, from the Missouri river points which are reached by your road.

(Paper produced and marked Keeper's Exhibit 5, F. B. D.")

455*a* W. E. KEEPER'S EXHIBIT No. 5. See Vol. 4, p. 455.

Number of Carloads of Packing House Products and Fresh Meats received by I. C. R. R. from Missouri River points during year ending June, 30th, 1905.

From—	Packing house products.	Fresh meats.
Sioux City, Ia.....	768	
South Omaha, Neb.....	1414	653

456 Q. Can a railroad other than the Chicago Great Western fix rates on packing house products and fresh meats from St. Paul and Missouri river points and other points without abandoning the traffic?

A. They would probably have to abandon the traffic. If the volume was so great that the Great Western could not haul it, they might give us some business, but it probably would not amount to much. I think the Great Western would increase its facilities so as to do it all. It would mean abandoning the business.

Q. I understand that the relation between the rates on live stock and the rates on packing house products has been changed, not by increasing the rates on live stock, but by reducing the rates on packing house products. Is that correct?

A. That is correct.

Cross examination by Mr. COWAN:

Q. How long have you been in the Traffic Department of the Illinois Central?

A. About thirty years.

Q. Did you have anything to do with making these rates?

A. Which rates?

Q. The ones that you have been talking about.

A. Do you mean on fresh meat and live stock?
Q. Yes.
A. No, I did not have anything to do with it because they
457 were made already for us.
Q. When?
A. The present rates were made about, I think, in February, 1902 on the fresh meat and packing house products by the Great Western road.
Q. Did they publish the rates for you?
A. Not for us. They made the rates and we followed them.
Q. Why do you say they made the rates?
A. They published the tariff.
Q. For whom?
A. For themselves.
Q. Did they make the tariff for you?
A. It made the rate for us, it did not make the tariff for us.
Q. Do you mean to testify here that they made the rate for you?
A. I mean to say that they made the rates and we had to follow them and we published the tariff and took such business as we could get.
Q. When you say "we had to follow them", did you do it, did Mr. Keepers do it?
A. Well, I have charge of the issuing of the tariff on this part of the road.
Q. In other words, you are the man by whose mental activity those rates were adopted?
A. If you wish to put it that way, I will answer yes. I gave the directions to have it done.
Q. You did that as representing the Illinois Central?
A. Yes sir.
458 Q. You did that because you wanted to participate in the traffic which otherwise you could not do?
A. We had to use those rates in order to handle any of the traffic, yes sir.
Q. Do you believe them to be just?
A. No.
Q. Did you believe them to represent the correct relation of the rates between the packing house product and the dressed meats and live stock?
A. I don't. I did not really consider that at the time, if that is what you refer to.
Q. How do you consider it now?
A. I cannot say whether they bear a fair relation or not. On the present basis, I should say they were wrong.
Q. All rates are too low in your opinion?
A. Pretty nearly.
Q. Is it not a fact that the relation of the rates as established by the published tariffs which you published or caused to be published for your road, making packing house products and dressed meats, those rates lower than the other is not a reflection of your judgment but was because of the necessity of getting the traffic.

A. That is correct.

Q. Do you know of any other rates on your line of road on those products which are lower for the dressed meat and packing house products than the live stock?

459 A. Well, there are rates yes, but not where there is any great amount of business involved.

Q. Where is that?

A. I cannot give you the figures, but I can give you my judgment which is only off hand. The rates on live stock from Omaha to Sioux City and to New Orleans would be much higher than the rates of packing house products. To Cairo, more, and almost any other point, more.

Q. You don't mean that there is live stock moving from there, do you?

A. I stated that it was probably not a very great volume.

Q. Is live stock moving in competition with dressed meat from Omaha to New Orleans?

A. No, it does not.

Q. That is simply a paper rate. Now, doesn't that happen to be so because of the fact that the New Orleans rate is based upon the Mississippi rate from Omaha and from Missouri river points.

A. No.

Q. It just happened that way?

A. Those rates are not made that way. If there was a volume of business from Omaha or Sioux City of live stock, it would not be as low as the packing house product is.

Q. I will ask you if you know of any rate——

A. I answer you that the tariffs would not make it as low on live stock as on the packing house products.

Q. That came about by the change of this particular

460 tariff.

A. They are never made one with regard to the other, of course.

Q. How is it in the Central Traffic Association territory.

A. In the defined territories, take Chicago and New York, you mean?

Q. Yes, take the rates on packing house products and dressed meats on the one hand and the live stock on the other, in all the classifications are not the two placed—in what classification are the two placed in the Central Traffic Association territory.

A. The packing house product are in the fifth class.

Q. And the live stock?

A. The live stock is not classified, it is a special classification.

Q. Isn't it classified in the fifth class?

A. Fresh meat.

Q. Live stock.

A. No, it is not because the fifth class rate from Chicago to New York is thirty cents and the rate on cattle is twenty eight.

Q. I am talking about the Central Traffic Association territory. New York is not in that territory, is it?

A. No.

Q. Well, you are talking a-out a rate from Chicago to New York?
A. Yes sir.
Q. What is the classification in the Central Traffic Association territory.
A. Well, I don't remember exactly.
461 Q. Have you the classification?
A. I have them at the office, yes sir.
Q. Please produce it so we can see, if you don't recollect. To refresh your memory I will ask you if dressed meat is not classified in the third class and packing house product and live stock, both as fifth class?
A. Packing house product is fifth class. I am sure of that, because I had occasion to know that and I think that cattle and hogs may be in the fifth class, but I could not say for certain.
Q. In the Illinois classification in the state of Illinois, what is it there?
A. They have a special classification. Live stock of all kinds are classified specially. They have a regular class of their own.
Q. And what is the packing house product.
A. There is so little moved that I don't know that. I would have to guess at it, I don't know exactly.
Q. And the dressed meat?
A. It may be the fifth class or the sixth class. It is sixth class in carloads and fourth class probably in less than carloads.
Q. Which, the products or the fresh meat?
A. The products. The fresh meat is first class in less than carloads, but probably about third class in carloads. I am not giving you that exactly, of course.
Q. You have that data, however.
462 A. Oh, yes.
Q. Will you produce that?
A. Yes sir.
Q. Or ascertain what it is?
A. You want to get the Official Classification and the Illinois Classification.
Q. I asked first for the Central Traffic Association classification.
A. That is known as the Official Classification.
Q. And then for the Illinois classification. Now, as to the Iowa classification, has Iowa a classification?
A. Yes, the Iowa classification is the Western Classification with some exceptions to it, and additions made by the Railroad Commission of Iowa, it is practically the same as the Western Classification.
Q. In what classification does it show the dressed meat and packing house products respectively.

Mr. DAWES: I suggest that the classifications, being printed documents, if they show anything different from what the witness has testified, that they be produced by counsel who is cross-examining upon that subject. His memory as to this classification is of no consequence whatever as a matter of fact.

The COURT: Cut it as short a- you can. If you have those classifications and those schedules you can produce them.

Mr. COWAN: I am asking him to produce them now.

Mr. DAWES: I assume that it is counsel's business to
463 produce them as a matter of cross-examination. This evidence, of course, is hearsay.

Mr. COWAN: There has been all sorts of questions asked here that the witness does not know anything about. If hearsay evidence had been excluded, practically all of it would have been.

Q. As the traffic man of the Illinois Central railroad, have you had anything to do with the matter of conforming your rates to these classifications or the making of classifications or participating in making the classifications.

A. In the western classification we have. When I say "we" I mean to say that I would have if I attended the meeting, in making the classification. There are a good many different members, all the roads from the east and Indiana State line to the Pacific coast. The Iowa classification, the Iowa commission allowed that classification to be used as a basis and then they have added some modifications of their own. The official classification and we have nothing to do with that, that is handled in a different manner and our interests are not as great in it.

Q. Now in the Southern Railway & Steamship classification, do you participate in that?

A. It is called the southern classification. The Illinois Central has a voice in the making of that classification. It is made by a general committee of the Southeastern Association, a sort of a joint committee makes the classification and it has to be changed
464 from time to time.

Q. Does the official classification govern in the Central Traffic Association territory?

A. Yes sir.

Q. Your road extends into that territory, does it not?

A. Well, a very little distance. It runs over into Indiana fifty or sixty miles down to Evansville. We have got 100 miles or so in that territory.

Q. The official classification north of the Ohio river and east of the Indiana and Illinois State line, the southern classification and the western classification comprise the great classification territory of the country?

A. Yes sir. There are some great modifications of those. There are some exceptions to them in places. Illinois is made up of everything else. It stands by itself and is made by the railroad commission.

Q. Isn't it a fact that with the exception of the reduction of the tariff in packing house products and in dressed meat rates, caused by the contract of the Great Western Road or brought about at that time, is the only instance in which by the classifications and rate schedules, the live stock rate is higher than the packing house products and dressed meat rate, where the two come in competition.

A. I could not answer that one way or the other.

Q. You claim that you don't know?

465 A. I don't know, no. I haven't given it any consideration in that light. Those are really commodity rates. They are always,—they extend from one point to another, and the matter of classification is lost sight of entirely. No one thinks about classification or the way freight is classified.

Q. Well, the classification is an expression of judgment.

A. It cuts no figure at all because the commodity rates go beyond the classification.

Q. Take the commodity rate then on your road. You hauled dressed meat and packing house products from New Orleans to Chicago, do you?

A. Not much dressed beef comes from the east. Packing house product does.

Q. Don't you haul live stock from New Orleans and Mississippi river points to Chicago?

A. To some extent.

Q. Isn't it a fact that the live stock rates are in all cases higher than the rates on dressed meats and packing house products?

A. No, there are no shipments of live stock south bound and there are no shipments of packing house products or dressed meats north bound.

Q. I am taking the direction in which it actually moves.

A. As I have said there are no shipments of live stock south bound and no packing house products or fresh meat north bound.

Q. Between the points then that I have named, between

466 New Orleans and Chicago, is it not a fact that the live stock rates are less than the packing house products and dressed meat rate?

A. No, they are greater I am pretty sure.

Q. How is that?

A. I think they are greater, and I think I can give you something further on that.

Q. What is your rate on dressed meat from say, New Orleans?

The COURT: He says he can find it out.

The WITNESS: No, I would not undertake to answer that. I thought perhaps I might throw some light on it but I find I cannot.

Mr. COWAN:

Q. I just asked you if you recollect the rate on dressed meat from here to New Orleans?

A. My recollection is that it is fifty cents a hundred, but I am not quite certain. The rate on packing house product is 36.

Q. Does that come by reason of their being in different classifications?

A. No, the classification cuts no figure in it.

Q. What is the rate on the fifth class, Chicago to New Orleans in carloads?

A. I think it is 52 cents, that is my recollection. It is about that, anyway.

Q. Do you recollect what the rates are on live stock from points like New Orleans and this side to Chicago?

467 A. No, I do not.

Q. Isn't it a fact that you ship from Southern Texas and New Orleans over the Southern Pacific and Illinois Central lines and that the rate is 63¾ from New Orleans to Chicago?

A. Our proportion of their rate, you mean?

Q. The through rate from San Antonio is 63¾.

A. We have had some shipments there, but we are considering very seriously going out of the business.

Q. That does not alter the question.

A. You asked me the rate from New Orleans to Chicago and then you asked me about the rate from San Antonio. There is no relation between the two but you seem to give that as a reason why I should know about the other.

Q. Do you know what the rates are from points in the state of Mississippi to Chicago?

A. I don't recollect, no.

Q. Do you know of the fact that the relation of rates from Chicago to th- Atlantic seaboard, New York, for example, between packing house products and dressed meat on the one part and live stock on the other, was submitted by all the railroads to arbitration in which Mr. T. M. Cood and another gentleman acted as arbitrators and fixed the rates which have been used since that time?

Mr. DAWES: I object to that. It does not appear that any of these parties were parties to that proceeding.

The COURT: I think he may answer, he is cross-examining him.

468 A. I understand that the question was submitted to arbitration some years ago. Just how long I don't know. The Illinois C-ntral is not interested, and just how long ago it was I don't remember. It must have been at least a dozen years ago or fifteen, perhaps, and possibly longer.

Mr. COWAN:

Q. That has been the established relation of rates east bound since that time, has it not?

A. Well, I am not quite certain as to that, I think there has been some variations. There have been a good m-ny variations. Directly we are not interested in that way and my knowledge would be only general, what I might happen to run across or hear of.

Q. Previous to the reduction in the packing house product and dressed meat rates, which was caused as you say, by the Great Western contracts (and I have no doubt you have truly stated it) is it not a fact that the published rates on packing house products and dressed meats were not lower from the Missouri river to Chicago than on the live stock?

A. They were the same.

Q. Is it not a fact that during that time and for several years previous to the published reduction in packing house products and

dressed meats rates, that the roads including your road customarily hauled packing house products and dressed meats at a rebated rate less than the published rate, isn't that true?

469 A. I shall not answer the question unless I am instructed to do so.

Q. How is that?

A. I shall not answer the question unless I am instructed to do so.

Q. Well, I am asking the question whether that is true or not and you decline to answer.

Mr. DAWES: Do you expect him to answer for the other roads as well as himself?

Mr. COWAN: If he knows, yes.

The COURT: He says he don't want to answer. Do you want to compel him to answer?

Mr. COWAN: I think he ought to be required to answer it.

The COURT: If you want him to answer it, I am ready to hear you on that subject.

Mr. COWAN: I don't care to take the time, but I think he should be required to answer the question as to whether that is the fact or not. I can prove it otherwise, I can prove it by the records and Mr. Stickney stated it in his statement and nobody has ever denied it. It is a matter of record.

Mr. SEVERANCE: Well, you have testified to it now, you have got in the record now.

Mr. LYNDE: You have testified to it.

Mr. COWAN: Mr. Stickney testified to it.

470 Mr. SEVERANCE: No.

Mr. COWAN: No.

Mr. COWAN: Leaving out the question of whether rebates were paid, I will ask you if it is not a fact that you did not increase your revenue that you collected from the packing houses for the dressed meat and packing house products $1.00 when you re-published the rate, that you did not increase your revenue a dollar?

A. Do you wish me to answer yes or no to that?

Q. Well,——

A. That is not correct.

Q. How much did you increase it if you increased it?

A. Perhaps I have the question wrong.

(The pending question was then read.)

A. When we publish a reduced rate, of course, we did not increase our revenue.

Q. Did you reduce your revenue?

A. No. Wait a minute, I beg your pardon. We did reduce our revenue. When we published a lower rate, when we published a 20 cent rate, we reduced our revenue to that extent.

Q. Did you reduce them, did you reduce your net revenue from the business?

A. We reduced our revenue from the business if we carried any.

The COURT:

Q. That is, you have been charging more than 20 cents before.

471 A. We had been charging 23½ on anything we got and didn't refund anything during the period that that change was made.

Mr. COWAN:

Q. You reduced it how much?

The COURT: He said 3½ cents.

A. Reduced it 3½ cents to Chicago and 5 cents going east or whatever the change was.

Mr. COWAN:

Q. Then you mean that there was no rebate paid?
A. I mean that we were not paying any rebates then.
Q. Were you getting the traffic?
A. Not a great deal of it.
Q. Now do you know whether anybody else was paying rebates or not?
A. No, of course I don't.
Q. How is that?
A. Of course, I don't. I have no evidence to that effect; I have been told they were, but that would not be considered good evidence.

The COURT:

Q. When was this, what perio- are you referring to?
A. 1902, February, 1902. The rates, as I recollect were not changed till later than that. They were not changed till the summer of 1902 and that is what I make my statement on with that understanding. It was after the injunction.
The COURT: That was in March?

A. March 24th. The tariff was changed as I recollect it

472 in July, 1902. We were not paying any rebates or anything of the kind.

Mr. COWAN:

Q. Now, you say that your road then—You would not answer my first question—Your road was not paying any rebates and you don't know whether the others were or not?
A. I don't think the others were, if you want my opinion. Your question was general before in such a way as would indicate that we had been practicing right along the paying of rebates. I did not think it was necessary to answer that.
Q. And now you mean that at the very time you changed your rates, rebates were not being paid?
A. I mean to say that after the injunction, the 24th of March, 1902, there had been no rebates paid.
Q. Previous to that time you decline to answer?
A. If you want to know about it I will answer it.

Q. I think it is barred by limitation, but it does not matter. You stated that you did not think these live stock rates were reasonable?

A. No.

Q. Isn't it a fact that you have testified a number of times before the Interstate Commerce Commission in regard to the reasonableness of rates.

Mr. BAXTER: He did not state that, did he?

Mr. COWAN: I should have stated that he said they were
473 unreasonably low. That is what you meant, isn't it?

A. Yes, I don't think they are too high.

Q. Is it not a fact that every time you have testified before the Interstate Commerce Commission in regard to the reasonableness of a rate, you have at no time admitted that any rate was too high but have generally contended that they were too low?

Mr. SEVERANCE: I object to that unless his attention is called to the particular time when he gave such testimony.

The COURT: I am not enforcing the strict rules of evidence.

A. The question I presume that you have reference to, what you mean is rates on live stock and I am firmly convinced in my mind that all the rates on live stock are too low.

Mr. COWAN:

Q. When you have testified in regard to rates on grain and corn and grain products, have you not testified that they were too low?

Mr. LYNDE: What materiality has that got here?

The COURT: I suppose counsel wants to show that he thinks they are all too low.

Mr. SEVERANCE: That is not a matter that is material to the issue. Why not insist on the rules of evidence being enforced? He should have his attention called to the testimony that he gave and the time that he gave it.

The COURT: It affects the credibility of the witness, whether
474 the witness has testified falsely on other matters and I suppose it is a matter that we should know about.

Mr. SEVERANCE: I don't think the court gets the point of my objection. My objection is just this. When it is sought to bring to the attention of the witness' previous testimony that he has given with the idea of impeaching testimony that he gives on the stand, the rule is well settled that his attention must be called to the specific occasion when he gave the testimony and the exact language used must be read to the witness.

The COURT: I won't start in at this time to enforce the strict rule. You may answer the question if you wish.

(The pending question was then read.)

A. I am not clear in my mind as to having testified in reference to the grain products. If I did I don't remember. I would like to have you tell me where and when it was.

475 Q. In the grain investigation had here in Chicago about two years ago in regard to an advance in the rates on grain

from the Missouri River to Chicago, did you not then express the opinion that the rate on grain was too low?

A. I don't believe I testified in that case at all, or if I did I don't remember.

Q. Did you testify in the lumber case too?

A. What lumber case?

Q. I don't recollect the style of the case.

Mr. SEVERANCE: Oh, take any old case, it don't make any difference.

Mr. COWAN: It does make a difference too. If his opinion generally is that the rates are too low, it shows a bias in his disposition. It is not that he is testifying falsely or anything like that.

The COURT: He has answered that question, now ask him another question.

Mr. LYNDE: As to the lumber case?

The COURT: He said he did not know whether he ever testified in such a case.

The WITNESS: I will say stronger, that I never did testify in it.

Mr. COWAN:

Q. Now, you say that the live stock rates are too low?

A. That is my opinion, yes sir.

476 Q. Do you know what it costs you to haul a car load of live stock from St. Louis to Chicago or from the Missouri River to Chicago?

A. There was a gentleman here this morning that has a great deal more experience than I have in that matter who said that he did not know, and I say that I don't know.

Q. You do know what the revenue would be?

A. I know what the freight receipts would be, yes. The revenue would be the net money.

Q. Are you able to tell whether the rates are too low or not, how can you tell that if you don't know but one side of the equation?

A. You have to judge largely by comparison and the general results. It is made up of a great many things. We know what our rates are generally. We know what is brought in and we know about the loading of the cars, the cost of furnishing the cars and getting them to a place where they had to be loaded. Whether they can go there loaded or not, the speed at which they can be run, the danger attending the handling of the freight and various other things.

Q. And from all that you conclude that the live stock——

A. The live stock does not bear the proper proportion. It does not contribute sufficiently to the general fund.

Q. Take the rate from Ft. Dodge, Iowa, to Chicago, 372 miles, have you ever estimated how much it is per car or per ton

477 mile?

A. Yes, I have got it right there if you want it and I will read it to you.

Q. Do you know or have you in mind what the average revenue per ton mile is on your road?

A. Yes, I know what it is.
Q. What is it?
A. It is 5.87 mills for the year ending June 30th, 1905.
Q. Do you know what your average revenue is per car mile?
A. No, I do not.
The COURT: What do you say?
A. It is 5.87 mills, 587 thousandths of a cent.
Mr. SEVERANCE: Please speak louder, we cannot hear a word you say.
A. Our revenue or our receipts, as we call them, per ton of freight, the average per mile was 5.87.

Mr. DAWES:

Q. Was that cost or revenue?
A. Freight receipts, we do not call it revenue.
Mr. COWAN: For 1904 the figures I think were higher.
A. It was 6.07, two hundredths of a mill higher than last year.
Q. Your revenue per car mile, have you that?
A. No, I have not any of those statistics with me.
Q. Have you the number of tons per car mile?
A. No, I have not got any statistics at all of our road in that regard here.

478 Q. It appears from the figures taken from your annual report, that the revenue per car mile was 9.70. Now, that is the average of all your freight. Isn't it a fact that all of your live stock rates in the State of Iowa will pay you 40 or 50 per cent. more per ton mile and per car mile than the average of all of your freight on the system?
A. It ought to pay more. The majority of our freight is such as takes care of itself.
Q. I am asking you as to the fact, as to whether it would do it or not and you say it would.
A. I say I don't know.
Q. Well, it is 23½ cents from Fort Dodge to Chicago?
A. Yes sir.
Q. And it is 22,000 pounds and 23½ cents, about $56 a car for 373 miles ?
A. 375 miles we call it.
Q. Isn't it a fact that you participate in the traffic of live stock received by you off the Union Pacific?
A. Yes sir.
Q. At South Omaha?
A. Yes sir.
Q. And you pay a bridge charge of $4 a car?
A. No, we don't. We don't pay it. We get the transfer of the gross rate.
Q. A percentage of the through rate you mean?
A. Yes, sir.

479 Q. How much do you get out of the transaction for hauling a car load or a train load of cattle from South Omaha to Chicago that you receive from the Union Pacific, that is shipped from points west, say at Denver?

A. I don't know. I don't remember now. It depends in a general way on so many things.

Q. The rate is 29 cents from Cheyenne. That is a prominent point. It is 29 cents from there to Omaha and it is about half the distance, Omaha is.

Mr. LYNDE: I think you had better produce what you are reading from.

Mr. COWAN: I have got it right here and it is a public record.

Mr. LYNDE: Well, you had better produce it.

The COURT: The witness can answer whether that is true

A. I have not anything beyond Nebraska to show our divisions of the rate, showing what we get from the Union Pacific.

Mr. COWAN:

Q. What do you get out of the rate from Cheyenne?

A. I have not anything to show the divisions from a point over 200 miles west of the Missouri River.

Q. What do you get there?

A. Well, there is a town by the name of Odessa and I think we get 21.1 cents per hundred on cattle and 23 cents per hundred pounds on hogs.

Q. Do you have any business with the Union Pacific at
480 any other points than Cheyenne in the west?

A. Do we get any?

Q. Yes.

A. Not much, very little.

Q. What is the lowest division that you accept from any railroad at Omaha, to Chicago?

A. Well, I could not answer that completely. Here is a distance of fifty miles, a place called Ames, Nebraska, our lowest division—no, there is somewhat—well, here is Ames any way and we get 18.9 cents per hundred on cattle and 18.6 on hogs.

Q. As you go west and the distance is further on the other side your proportion of the rate is less?

A. No, our proportion is greater. From Odessa we get 21.1 on cattle and 23 on hogs. I don't know how it would be beyond that. I don't know just what we would take on that, but that would be fair enough.

Q. Didn't you file in the cattle raisers' case a statement showing the divisions that you received?

A. I think I filed some illustrations there, yes.

Q. And the divisions had run down as low as 16 cents, hadn't they, at the Missouri River?

A. I think there was one point and perhaps possibly more than one where the division was 16 cents.

Q. Why do you accept business at these low rates if the published local rate is too low?

A. We don't assume and we don't try to haul any freight
481 less than cost. If we can get cost out of it we have to stay in the business, it is policy to do so.

Q. Do you participate in the lumber traffic that comes from the northwest into Omaha?

A. By the northwest you mean what?
Q. From points on the Burlington——
A. The northwest may be different as you change your position.
Q. Well, you can answer whether you get it from the northwest?
A. I don't know where you mean.
Q. I mean from Omaha, stuff that comes in from Billings.
A. I don't think we can get any of that business.
Q. Do you participate in the lumber traffic that comes from the southwest through Kansas City and Omaha?
A. Into Omaha from the southwest and from Kansas City?
Q. Yes.
A. We don't have any line in that direction, no.
Q. I say such that comes through Kansas City or Omaha from the southwest or from the south?
A. What is the destination, please?
Q. Do you participate in the lumber traffic that comes from south of Kansas City or Omaha, into Omaha?
A. I don't believe I understand you. If you mean business that comes through Kansas City and goes to Omaha I say no. You said from Kansas City or Omaha into Omaha.

482 The COURT: Do you participate in any such traffic south of Omaha?
Mr. COWAN: That comes from south of Omaha?
A. No.
Q. Or from south of Kansas City?
A. We might possibly get a little lumber from the south, Arkansas, but not very much though.
Q. Do you participate in the lumber traffic coming from the Texas lumber district via New Orleans to Chicago?
A. Some of it, yes sir.
Q. What is your rate on lumber from New Orleans to Chicago?
A. I think it is about 26 cents on that.
Q. Per hundred pounds?
A. Local, yes sir.
Q. What is the distance?
A. 912 miles.
Q. What is the rate from Beaumont, Texas?
A. I don't know. It is the same rate, I suppose. It ought to be the same rate all along there.
Q. Where do you haul lumber long distances except the lumber that does come from that district or from some point in Louisiana, or some point in Georgia, or Mississippi?
A. Long distances?
Q. Yes.
A. We would have to get it from some point down there in order to get it very long, to get the length of the road. That is about the only point. We might haul lumber from Cairo to Sioux City.

483 Q. What does the revenue from the lumber on those rates amount to per ton mile or per car mile?

Mr. LYNDE: I object to that as entirely immaterial.
The COURT: He may answer.

A. About 8 mills, I think, as a rule, some where along there.

Mr. COWAN:

Q. You have in your statement of rates from Kansas City to Chicago put lumber at $75.20 a car. That is one of the examples you have given in your examination in chief. Now, you say you do not haul any lumber, any of that lumber practically?

A. Perhaps I might say in explanation that that statement was designed to cover—it was supposed that that statement would call for all the Missouri River points although we do not participate directly in it. We have a line to Kansas City although we form a line with the Missouri Pacific, by way of Council Bluffs.

Q. The point I am getting at is, is not this a paper rate?

A. 20 cents on lumber from Kansas City to Chicago?

Q. $75.20 a car is practically a paper rate from Kansas City to Chicago. There is no lumber moves on that rate.

A. How about walnut lumber, there is some of that down there, isn't there?

Q. Well, I am asking you. You asked me if there was not walnut there. I don't know.

A. You said there was none *none*. If twenty cents was
484 the rate on lumber and some would move, that would be the charge.

Q. I am asking you whether you know of moving traffic on the rates that you have given here.

A. As to knowing absolutely of a car of lumber from Kansas City to Chicago, I don't.

Q. The facts that you have given—I notice that you have given one item of cement from Kansas City to Chicago, $67.50. Is there any such traffic moves on your road?

A. There may be, there could be. There is cement made in Kansas City. Does that read Chicago to Kansas City or Kansas City to Chicago, or between?

Q. This says from Chicago to Kansas City.

A. That is not what you stated.

Q. Then you have got it from Kansas City to Chicago the same?

A. That would apply also to the lumber.

Q. Is there any cement that moves between the two places?

A. I think there is, there is cement made in Chicago, large quantities of it.

Q. Is that shipped to Kansas City?

A. I don't know why it could not be, I have no knowledge of any particular shipment going there.

Q. Another statement is on brick. Is that shipped between the two places?

A. It could be probably.

Q. How is that?

A. I say it could be probably, enamelled brick or prepared
485 brick. Common brick would not be, of course.

Q. And coal between Chicago and Kansas City, is there any such movement as that?

A. I should think gas coal and hard coal. There would not be any soft cheap coal shipped, of course.

Q. Those are commodities on which you have named the revenue per car. Then you have named the revenue on cattle and hogs, wheat and corn, from Kansas City, St. Joseph, Atchison and Leavenworth, on 70,000 pounds of corn, you figure $105. What rate does that require, 15 cents per hundred pounds?

A. That would be fifteen cents per hundred.

Q. Is there any corn shipped from Kansas City to Chicago at that rate?

A. That is a basing rate. The first station this side would take the same rate. I can not say as to any cars shipped from Kansas City to Chicago at 15 cents per hundred.

Q. Well, having the large and wide experience in your business that you have, you must know that corn is not shipped on anything but a through rate?

A. This is used for basing purposes.

Q. Don't you know as well also that the intermediate stations don't move on a local rate to Chicago but move on the local rate from the Mississippi River and then take the export

486 rate?

A. I don't know that.

Q. Do you actually ship corn and wheat from your intermediate stations leading out of Kansas City to Chicago on a local rate from those stations, without regard to the Mississippi River proportional?

A. If you will change that so that it will say Omaha or Sioux City, it will be all right. I can say yes in connection with Omaha and Sioux City. The Kansas City rate is put down there simply for convenience.

Q. Well, take it at Omaha. You have got a line into Council Bluffs and South Omaha?

A. Yes sir.

Q. Do you ship corn and wheat at local rates from points this side?

A. Yes, they come at local rates. The rates on corn are not made on the Mississippi River basis. They are made direct to Chicago.

Q. What is the local rate from points in a zone 50 or 100 miles this side of Omaha?

A. It is the Omaha rate. There has been a little change in them since that was made up. I think the rate is a trifle different now. That would be the rate of the first station outside of Chicago.

Q. You have another comparison of rates from points on your line to St. Paul and from some points in Nebraska to St. Paul. As I understand you, you say your line does not reach St. Paul?

A. It does not reach there directly, no.

Q. Are there any live stock shipped from those points

487 in Nebraska to St. Paul?

A. I don't know. I took the tariffs, they are the rates that are printed and published and filed with the Interstate Commerce Commission. They are considered to be the correct rates.

Q. Then you have rates on coal from Chicago into Iowa. Is there any coal shipped from Chicago to Iowa?

A. Yes, more or less. There is hard coal shipped out there to all of these towns, there is more or less blacksmith coal and some gas coal to these various towns that make gas.

Q. Is there any place at which coke is shipped into Iowa?

A. Waterloo, Fort Dodge, Council Bluffs, and such towns as that.

Q. What kind of cars are used in the shipment of coal to Iowa?

A. Did you say coal or coke?

Q. Either, do you use stock cars for that purpose?

A. No, we would not use stock cars. The coke would come to us in foreign cars and the foreign road would deliver the cars to us.

Q. You have brick and cement, are those articles shipped from Chicago into Iowa?

A. Yes, cement is and a little brick. Not the cheap common brick, of course.

Q. Without enumerating any further articles, further, I will ask you if it is not a fact speaking generally, that the figures which you have made for the rates of freight or revenue that is to be
488 paid per car on the various items contained in this extensive comparison will show a revenue per ton per mile more than double for the average revenue per ton per mile?

A. No, they won't.

Q. Haven't you selected them with a view of showing higher rates than those rates on cattle and hogs? Haven't you selected them with a view to showing the higher rates and put them altogether on that basis, instead of selecting a fair average?

A. I put them down to show—let's see if I understand you. What articles are you referring to now?

Q. Well, here are about ten pages of them.

A. There are a good many different articles, yes.

Q. You have cattle and hogs and wheat and corn, and hard and soft coal, brick and cement and lumber on one page and the next page and the next page and the next page, between a great many different stations.

A. Yes sir.

Q. And in all cases it shows a rate or revenue which is above your average revenue per ton per mile notwithstanding they are considered no great traffic.

Mr. DAWES: I object to that. That is simply an assertion of counsel.

The COURT: He asks if that was true. Ask him the question if you want to.

Mr. COWAN: I am asking if he has selected these with a
489 view of showing the rates that are higher on these articles in order to show that they are higher than the cattle rates in question?

A. I don't think they do in the first place.

The COURT:

Q. Well, have you selected them for that purpose?

A. No, I did not, I selected them to show that the revenue derived on common low class freight is better and more remunerative business than the live stock business. In those cases they are a lower rate per ton per mile than live stock.

The question I ask you now is whether it was not the higher rate per ton per mile than the average of your freight?

A. No, it is lower. I think in most cases it will show a lower rate per ton per mile than our average.

Q. Do you know of a single car load of cattle or hogs ever being shipped from Columbus, Nebraska, or Silver City, Nebraska, or Ames, to St. Paul?

A. No. As I said a few minutes ago I took that tariff as the legal tariff, filed with the Interstate Commerce Commission showing the rates evidently in use and declared to be in use by the railroad issuing it and published for the purpose, and I used it for the purpose of showing that there are other rates that are much higher than those referred to now.

490 Q. Is this a fair representation of what the other rates are?

A. It is a fair representation so far as I know of the rates in that territory. You will observe that I have only taken a few in the same distance. I simply took half a dozen points in order to compare them properly with the distances to Chicago.

Q. Those rates are practically, so far as you know, paper rates from those points to St. Paul?

A. I don't know that they are paper rates or not. I know they are rates that are published by the railroads and if there is any business to move, it would take those rates presumably.

Q. You have also put in the list of rates there from Goodman, Mississippi, to East St. Paul on cattle and hogs.

A. Yes sir.

Q. To what extent are there cattle and hogs shipped from Mississippi to St. Louis?

A. There are quite a good many and the business is growing. It is not a great big extensive business like out in Iowa, but it is a business that is increasing and we have what we consider quite low rates. Those are rates that we made without much regard to competition. They are very fair rates, I think.

The COURT:

Q. Without regard to competition?

A. There was no competition there except the competition of the market. Nearly all that territory is local.

491 Q. What are they now?

A. They range more, 20 per cent. higher, I should think, or some where along there.

Mr. LYNDE: A little louder, we cannot hear you.

A. I said about 20 per cent. higher.

Mr. DAWES:

Q. Is the business increasing there, did you say?

A. Yes sir. It is not an extensive business but it is growing. They will have larger cattle after a while and then we will get better loading.

Mr. COWAN:

Q. How many car lengths do you think your road shipped in a year bringing from Mississippi or St. Louis, cattle and hogs?

A. I don't think there is any hogs, but when you are dealing with live stock you include hogs.

Q. How many car loads of cattle?

A. I could not say off hand; I don't know. As I said before, it is not a large business.

Q. It would certainly be a very accidental business, wouldn't it?

A. No, there is some stock raised there. You have not got across the Mississippi River yet, but there is some in that locality.

Q. Now, you have given a list here under the head of vegetables, I suppose——

A. Yes, that is light loading, you see.

Q. Showing the rates from Mississippi River points to Chicago and St. Louis on apples. Is there any such traffic on apples.

492 Is there any such traffic as that?

A. From those points to Chicago and St. Louis. There are apples raised in Mississippi as well as cattle, more apples than cattle.

Q. Well, I supposed that but the movement is very small, isn't it?

A. Why, Mississippi is a good fruit country.

Q. The movement over your road to Chicago from Mississippi is very small?

A. It has more than one kind of fruit, you know, there are half a dozen varieties.

Q. Well, you can say whether it is small or not, whether the volume of the traffic is small.

A. The volume of apples from the State of Mississippi is not very extensive.

Q. That is just the sour apples off the trees?

A. Yes, just ordinary common Mississippi apples.

Q. You have the rates from Jackson, Mississippi, on apples to Chicago, $124 a car. Now, take the direction of the actual movement of apples, from San Jose, California, to points on your road, what do you get out of it then?

A. I cannot carry all those rates and divisions in my head.

Q. What do you think that the rates on apples are from——

Mr. DAWES: I object to what he thinks.

The COURT: He says he don't know.

493 Mr. COWAN:

Q. I believe that Mr. Keeper knows that the rates on apples from San Jose, California, to Chicago are $1 per hundred.

A. Is that what you asked me? I thought you asked me the rate to Jackson, Mississippi, from San Jose.

Q. How is that?

A. I supposed that you asked me what the rate on apples was from San Jose to Jackson and the division.

Q. Oh, no.

The COURT: San Jose to Chicago.

A. The rate is about $1 or $1.25 at the outside.

Mr. LYNDE: I suggest that if you don't know what a rate is that you had just better say so and don't guess at it.

Mr. COWAN:

Q. Is it not a fact that you can take rate schedules and make up almost any sort of a comparison of rates that one desires to make?

A. No, I cannot answer that in any other way than that.

Q. Is it not a fact that a great many rates are made which cover very seldom shipments that do not require very much judgment of anybody and yet when rates are made that cover a large volume of shipments that that is made in view of competition in order to get the business and that it does reflect somebody's judgment?

A. Tariffs and classifications are made to cover everything. Items have to be added to it at every meeting of the Classification
494 Committee. New articles are made and some provision has to be made to cover them. It is occurring constantly and it seems to me there is something constantly coming up that is not in the classification. Agricultural products are the largest and they naturally receive the greatest attention. It is there that there is the strongest competition.

Q. You answered Mr. Baxter that these live stock rates were lower than other live stock rates in the country, or as low as any you knew of with the exception of the Illinois and Iowa rates and the rates to New York. How is it as to the rates to Buffalo and to Pittsburg?

A. You did not get the answer correctly. I stated the territory east of Chicago.

Q. Assuming that I left out some number of stations.

A. East of Chicago. These eastern territory rates are lower on live stock than they are west. That was included in my answer by inference at least.

Q. Is it not a fact that the balance of the rate on which live stock is really moved from the Missouri River to Chicago is less in all instances than the local rate of 23½ cents?

A. There is no balance of rate used north of the southwestern points, that is to say at Omaha.

Q. Is there not a balance of the rate used at Omaha?

A. No sir.

495 Q. Is it a division of a through rate?

A. A division of a through rate only.

Q. It is the balance of the rate to the shipper?

A. Well, you could put it that way.

Q. Say that he ships from Denver to Chicago at 49 cents, say he ships from Denver to Chicago at 49 cents. If he stops at Omaha and sells his cattle, he pays 33, and if he goes on to Chicago he pays 16 more. Now, to the shipper that is the balance of the through rate, isn't it?

A. No, to ship it to another market, it is the through rate. He don't bother himself about the balance of the through rate.

Q. Well, that is what he pays?

A. He pays the through rate to Chicago. He stops at Omaha and he pays the rate to Omaha, so far as he is concerned in the transaction. The billing is changed, but it goes through, the shipment.

Q. All the traffic men have been calling it the balance of the through rate.

A. There is a balance of a through rate down at Kansas City, I understand but nothing of the kind at Omaha.

Q. At all events, the shipper has to pay 16 cents more if he comes on to Chicago?

A. If your statement of the rate is correct, that is right.

Q. I have here a statement or comparison of rates and I desire to ask you if they are correct. From Mounds, Illinois, to Chi-
496 cago, on your line of road, 357 miles of 15.7. Do you recollect if that is substantially correct?

A. On what?

Q. On cattle?

A. Well, if it is given there as the rate I will say that is correct.

Mr. DAWES: You don't know what it is on.

The WITNESS: He says it is on cattle. I understand his statement to be that the rate was 15.7 on cattle from Mounds to Chicago.

The COURT:

From where to Chicago?

A. Mounds.

Mr. COWAN:

Q. Independently do you recollect what the rate is?

A. If that says it is 15.7 it is correct.

Mr. DAWES: How do you know?

Mr. COWAN: Well, it appears that way in the Commission record here. I am not saying it is in this record.

The WITNESS: Oh, the Commission record.

Q. The record of the evidence before the Commission in this case. My question is, is the rate 15.7 from Mounds to Chicago?

A. I don't recollect the rate.

The COURT: You don't remember?

A. I don't remember.

Mr. COWAN:

Q. Have you got a copy of your tariff from Illinois points?

A. I have not that with me, no.

497 Q. What rate do you charge from some points in southern Illinois?

A. I might have that in this Exhibit number four. You have got that there, look at Exhibit number four and see if you find it. It is a yellow sheet, I think.

Q. Well, there are the tariffs (handing papers to witness), refer

to Mounds and state what the rate is on cattle to Chicago, and the distance?

A. The rate on cattle from Mounds to Chicago is 15.7 per hundred pounds.

Q. What is the distance?

A. 357 miles.

Q. What is the rate from Webster City, Iowa?

A. To where?

Q. That is 356 miles. That is in the 23½ cent belt, is it not?

A. 23½ cents from Webster City to Chicago.

Q. And the distance?

A. 355 miles.

The COURT:

Q. Live stock?

A. Cattle and hogs, yes sir.

Q. That is a shorter distance than the Missouri River points?

A. It is quite a distance this side.

Q. And about the same rate?

A. That rate is carried back some distance.

Mr. COWAN:

Q. I did not understand what was being said there.

A. He says the Missouri River rate and I said yes, this
498 rate is carried back for some distance.

Q. What is the rate on hogs from Mounds to Chicago?

The COURT: He said cattle and hogs 23½ cents.

Mr. COWAN: No, I said cattle before, cattle from Webster City, Iowa, and that rate is 23½. Now I am asking——

A. Hogs 19.2 cents, 100 pounds.

Q. Now, take Carbondale, Illinois, and I will ask you to state the distance and the rate on cattle.

A. 308 miles from Chicago and the rate on cattle is 15 cents and on hogs 18.4.

Q. Take Aplington, Iowa.

A. 22 cents a hundred pounds on cattle and on hogs.

Q. What is the distance, 306 miles I have it here.

A. Well, it is probably not very far from that. I make it 308 miles, but it is along there some where.

Q. Now, without going further into detail I will ask you if it is not true that that represents about the relation of the rates and distances from Iowa points to Chicago and from Illinois points to Chicago?

A. It would for those distances you mention.

Q. Well, what other distances would be different?

A. I don't know.

Q. Well, take Dubuque, Iowa.

The COURT: Can't you use those schedules and statements in your argument and save a little time here? They will be in
499 evidence I assume.

Mr. COWAN: Yes, I understand it is so stated.

A. Take Dubuque, the rate on cattle from Dubuque to Chicago is 14 cents and on hogs 15. The nearest point that I can recall the distance is Neoga, Illinois, 184 miles to Chicago, as I recollect it the rate is 11.7 per hundred pounds on cattle and 15.9 on hogs. The rates I have given you from Illinois are not rates of the Illinois railroads but are the rates of the Illinois Commission. We did not make them.

Q. Now, isn't it a fact that the rates established by the Iowa Commission in the State of Iowa for 350 miles are considerably less than the Interstate rates from Iowa to Chicago for 350 miles?

A. I think not, but I have not the tariffs with me.

Q. You have not the tariffs with you now?

A. No. I could not make the exact comparison. I don't think there is very much difference along there, 350 miles.

Q. What is your opinion as to whether or not the relation of rates of 25 cents on cattle and 15.7 on dressed meat is a proper relation of rates as between those commodities?

A. Well, I am not thoroughly familiar with the conditions. I presume that refers to the St. Paul rates. I am not thoroughly familiar with the conditions prevailing up there and our
500 line does not extend there. We haul the business such as may come to us by our connection, but I had nothing to do with the making of rates. I don't think I am competent to express an opinion on that.

Q. In your experience is that a proper relation of rates, from your general knowledge of the situation?

501 A. I don't know that there is any very great relation between rates on packing house products and the live animals. Under some conditions there might be. Under others I don't think it makes any difference.

Q. How do you determine what is a proper relation in rates between dressed meat, we will say, and live stock?

Mr. SEVERANCE: I object to that if the Court please. He has just stated he does not think there are any relations.

The COURT: I think that is a proper question.

Mr. COWAN: Somebody has to determine it.

A. I don't think that there is any relation necessary.

The COURT: Read the question.

(Question was read.)

A. (Continuing:) As a rule it has been determined for us. We haven't had any opportunity to determine it ourselves. Somebody else fixes that. The conditions and one thing and another fix the rates. Conditions make the rates on both articles one way and another. The competition on one is strong; on the other not so strong. They reduce the rates where the competition is strong, and the other may not be reduced perhaps. It finally settles down to a fixed basis and stays there a while; as in the case of the 23½ cent rate, the Commission made an announcement of its dues and it was followed by the railroads for several years. That wasn't done by

the railroads voluntarily. There is no fixed relation in any-
502 body's mind, in any railroad man's mind as to what it should be exactly.

Q. What is the basis of a reasonable rate? You stated that these cattle rates were unreasonably low?

A. The only basis you could say would be fair compensation for carrying the freight, what would be fair and reasonable to encourage the business and not kill it.

Q. What is the fair compensation?

A. Nobody knows exactly, no more than you could ask a merchant what a fair return would be on his investment, what profit he should have from his goods, what he should get to keep things going.

Q. Can you name any factors in determining a reasonable rate which would apply generally in fixing rates?

A. Yes. The factor is to not kill the business; encourage the business.

Q. The lower the rate the more the business will be encouraged?

A. Perhaps it may be, and perhaps to the detriment of everybody concerned eventually. The carrier might conclude to go out of it entirely.

Q. What other factor can you name that would apply generally in determining what a reasonable rate should be?

A. It is so very long since we have had a right to make a rate ourselves or could do it deliberately, or fix a basis, it is pretty hard to answer that kind of a question. It is already done for
503 the railroad business. They don't make rates, railroad men.

Q. With this little knowledge you seem to possess as to what makes a reasonable rate, how are you able to determine that these cattle rates are unreasonably low?

A. Because they bring in a very small amount of money per car, considering the expense of doing the service, furnishing the cars especially for that service, which are of no other use hardly, running them empty in one direction; the fast time that is necessary; the liability for damage to the animals themselves and to the men in charge; haul of the men free, hauling a man free with one car of live stock in this territory, returning him back on a first class passenger train, if he has two cars, risks in that; and it costs something to haul him, because he takes up room of the people that pay money.

Q. Your rate from Ft. Dodge to Chicago is 23½ cents, is it not?

A. Yes.

Q. Three hundred and seventy miles you call it?

A. Yes.

Q. On thirty cars of cattle that would be $1,551.00 for that train. How much does it cost your road on an average per train mile for operating expenses?

Mr. SEVERANCE: I will object to that unless there is some evidence offered that he figures it right. We have only Mr. Cowan's statement as to what the revenue will be.

The COURT: He assumes that is true.

504 Mr. SEVERANCE: That is not the way he puts his question. He states it as a cold fact.

Mr. COWAN: I ask him if the rate is 23½ cents. He states it is.

Q. On thirty cars of cattle that would be $1,551.00, if my figures are correct; assuming they are.

Mr. SEVERANCE: That is a proper question.

Mr. COWAN:

Q. I would like to know what the operating expenses of your road are, per train mile, what it costs you on an average per train mile on the Illinois Central?

A. I don't know.

Q. How much would it cost you to haul that train from Ft. Dodge to Chicago?

A. I don't know.

Q. How much profit would there be in that transaction?

A. I don't know.

Q. What would be a fair return as a profit?

A. It is absolutely impossible to say, to fix in one's mind what would be a fair return without knowing a fair return for any one transaction, depending on the way rates are made, or the way business is done.

Q. How do you know then that 23½ cents is an unreasonably low rate?

A. I say it is an unreasonably low rate because the general results of the operation of our road are no greater than they should be, to be fair and reasonable as we regard it. The hauling of a
505 cattle and hogs, with all the incidents of danger attending them, is less remunerative than the hauling of other freight generally, and a low-grade freight particularly; it is less desirable from every standpoint.

The COURT:

Q. How long has the rate been 23½ cents?

A. I think ten or twelve years. It seems to me it was made in—well, over ten years anyway. I have forgotten exactly when it was made.

Mr. COWAN:

Q. What other traffic do you pull through Ft. Dodge that pays you a revenue as great per ton per mile as the live stock, in the same train or in other trains coming to Chicago?

A. I can answer that by saying that I don't recall any large volume of business, anything sufficient for me to call to mind at once that pays as high a rate per ton per mile as live stock would, but there is freight that pays very much more per car, which is a better basis to make an estimate upon—any freight that pays more per car.

Q. What freight pays more per car?

A. Grain is one thing I think of.

Q. Per car mile?

A. Yes, any way.

Q. What grain, aside from that taken from local stations, in weight, business as much per mile?

A. The proportion on grain, on the proportional rate from
506 Omaha.

Q. On how much?

A. Take it on the basis of eleven cents on coarse grain and twelve cents on weight to Chicago.

Q. And when it pays that per car mile it is on what basis of weight per car?

A. It is on the basis that is used there, which is low, 70,000 pounds to the car.

Q. Do you know whether or not in the actual transaction of business you pull trains which contain as many loaded cars which do not have live stock in the train as the trains in which there are live stock coming through Ft. Dodge and out of Ft. Dodge to Chicago?

A. I can only give a thing of that kind in a general way, because I have nothing to do with movement of trains. It has never been necessary for me to look up any particular train to see what it contained, at least not for that purpose in that particular territory. I feel quite convinced, if I should express my opinion simply, what I believe to be so, I would say yes, but our operating department people can answer that question more definitely than I can.

Q. Mr. Keepers, the relation of the rates on hogs and cattle from Illinois points seem to be that the hog rate is higher than the cattle rate?

A. Yes.

Q. Do you know of any reason why it should be?

A. It was made by the Illinois Railroad Commission. I think the reason is——

Mr. DAWES:

Q. Do you know whether they made it?

507 A. Do I know if they made it?

Q. Do you know what the reason was, if it was made by them?

A. Not absolutely.

Mr. DAWES: Then I object.

Mr. COWAN:

Q. Do you know of any reason why it ought to be higher on hogs than on cattle?

A. Yes, I know a good reason for it.

Q. What is it?

A. Because there is lighter weight of hogs per car than of cattle. The risk is not quite so much, but pretty nearly. The cost of the service is about the same and it ought to pay a higher rate to produce somewhere near the same revenue per car that cattle do.

Q. When you load double decks?

A. Double decks are not used much in this country. I believe we have got six double deck cars.

Q. Can you give any reason why the hog rates from Sioux City to Chicago are higher than the cattle rates by two cents per hundred pounds?

A. The only reason I can give for that is that the railroads found that they could hold a slightly higher rate from that point than Omaha.

Q. I have my question wrong—as to why the cattle rates are higher than the hog rates?

Mr. DAWES: Is it?

A. The rate is 25 cents on cattle; 23½ cents on hogs, if I am not mistaken. It is not exactly easy to answer that question. The railroads found that they could hold two cents or one cent and
508 a half higher, and they held it. It has never caused any trouble and brought that much additional revenue.

Q. Do you think the relation of 27 cents on hogs and 25 on cattle from St. Paul to Chicago, a 25 cent rate on the cattle from Sioux City as compared with the dressed meat packing house product rates, represents a correct relation of those rates?

Mr. SEVERANCE: If the Court please, he has already stated two or three times there was no relation between the two rates.

The COURT: Let him answer.

A. I don't think there is any fixed relation. There can't be any well-defined or clear logical relation. The rates are just made according to the circumstances and conditions, sometimes voluntarily and frequently not; they are forced upon the railroads.

The COURT:

Q. Do you think if the rates were changes back to where they were that there would be any difference in the amount of live stock that would come to Chicago from that neighborhood?

A. On the packing house product?

Q. If the packing house products and live stock were the same as they used to be would there be any difference in the carriage of stock from Western points?

A. I don't think it would make a difference of a car a year.

Mr. SEVERANCE: May I ask one or two questions?
509 The COURT: Certainly.

Mr. SEVERANCE:

Q. Is it not a fact that rates are often fixed by conferences between shippers and railroad companies?

A. Yes.

Q. The representatives of railroad companies?

A. Yes.

Q. And isn't it a fact that you are in the habit of receiving remonstrances from shippers if rates are unduly high?

A. If they think they are unduly high, we do.

Q. Isn't it a fact, Mr. Keepers, that you haven't had from any shipper of cattle in this territory under discussion, the Missouri river valley zone, any protest or objection to the rate that is in force?

A. We haven't had one for many years.

Q. Has anybody made any objection to that cattle rate with the exception of a crowd of commission men here Chicago, so far as you know?

A. I know of no others.

Mr. SCHAVER: We object to that question, on the ground that it calls for irrelevant matter, it is not relevant to any issue in this case; it is immaterial whether or not any shipper has complained to this witness or to anybody else. Of course he can't say whether complaints have been made to other railroad men or not, but it is wholly immaterial. The question in this case is whether the relation
510 between product rate and the live stock rate is an unjust relation. Whether or not complaints have been made does not shed any light upon that question. We could not introduce evidence that complaints had been made in support of our contention, nor can the defendants introduce evidence to show that complaints have not been made, in support of their contention. It is wholly irrelevant.

The COURT: You are not through are you, Mr. Cowan?

Mr. SEVERANCE: How is that?

The COURT: Mr. Cowan had not finished.

Mr. COWAN: Yes.

Mr. SEVERANCE:

Q. Isn't it a fact that you have had no complaint from any shipper of cattle or hogs or from any manufacturer of the product of cattle and hogs complaining of the relation between these rates, as it is called?

A. I have had no complaint.

Q. From any source?

A. From any source whatever.

Q. Anything about these rates or anything whatsoever, except from these commission men?

A. They haven't made it to me.

Q. But you understand they have made it?

A. Yes, in these proceedings.

Q. Now counsel called your attention to certain Iowa rates and certain Illinois rates; it appeared that the Illinois rates were lower than the Iowa rates. Isn't it a fact that the rates generally are lower in Illinois because of the density of the traffic and the
511 fact that there are large manufacturing towns in Illinois and that there are not in Iowa?

A. I don't think that the rates on live stock would be caused by that?

Q. I am not asking you about live stock; I say rates generally.

A. Rates generally?

Q. Yes.

A. The scale of rates in effect in Illinois the regular schedule of

rates promulgated by the Railroad Commission, are higher than in Iowa. The rates referred to by Mr. Cowan were inter-state rates and not Iowa rates.

Mr. SEVERANCE: I misunderstood his question, then.

Redirect examination.

By Mr. BAXTER:

Q. You were asked about the rates on cattle and hogs from Mounds, Illinois, and perhaps one or two other Southern Illinois points to Chicago?

A. Yes, sir.

Q. And you were asked to compare them with rates from points in Iowa?

A. With rates from points in Iowa to Chicago for similar distances.

Q. Yes. My question is whether the rates from Mounds and the other points in Southern Illinois with reference to which you were asked are not the rates made by the Illinois State Railroad Commission?

A. They were, yes.

512 Q. My question to you on the original examination was for a comparison of rates made by other railroad companies in the United States for similar distances?

A. Yes.

Q. You were asked on cross-examination if you had not selected certain commodities in order to make a comparison favorable to the defense in this case, with reference to the revenue which is realized per car load from different commodities as compared with live stock, cattle and hogs. I ask you if you know of any commodity that moves in car loads from which the revenue realized per car is less than the revenue realized from live stock per car for the same distance; if so to state those points?

A. I don't recall anything in staple commodities, anything of any importance, on which the revenue per car is not greater than on live stock. There may be a few articles that happen to be classified not high in the classification and that loaded very lightly, on which the revenue per car would not be great, so great perhaps even as cattle, but they are very few and far between and they ought not to be allowed to remain so. I merely say that because there may possibly be some of that kind. When I began to speak I had the idea of furniture, some classes of furniture load very lightly and they might produce a rate—the minimum rate and classified rate may produce a low carload rate. There may be a few such things, but the general volume of business that

513 moves, with almost no exception, the revenue is greater per car, for the same distance, than it is for live stock as far as my knowledge and information goes.

Q. Does the Illinois Central Railroad haul a large or small amount of tonnage of very low grade freight?

A. We haul a very considerable amount of very low-grade freight

or very low rate freight. I might say low-grade and low rate. Some freight is not a low grade but it is a low rate. For instance we haul a large amount of export corn from Illinois points to New Orleans. Our rate has been as low as ten cents per -undred pounds on that, has been twelve cents, has been and is now fourteen cents.

Q. But where a railroad tonnage consists largely of low-grade, low rate freight, does not that have a tendency to reduce the average freight received per ton per mile on that road?

A. Yes, especially when joined with the carrying of that commodity long distances, because the rate is bound to be low on low grade freight, will be very low in proportion on greater distances than on shorter distances.

Q. You were asked with reference to an arbitration that was said to have been had between the Eastern lines relative to the adjustment of rates as between cattle and hogs, on the one hand, and packing house products on the other?

A. Yes.

Q. Do you remember what the relation between those rates was prior to that arbitartion, which was the highest?

514 A. No, I do not. I do recollect this only, that there was a long, very serious warfare on rates in connection with that and the matter was finally submitted to arbitration. What the rates were before that I don't believe anybody knows now. I don't know what the regular basis was. I can't remember. I had no direct interest in the thing.

Q. Your line does not extend East of Chicago?

A. No, it did not then at all. It does not extend east of Chicago now. We do run down into Indiana, in the southern part.

Q. I mean in the direction of New York?

A. No, sir.

Q. Do you know whether the roads leading from Chicago to New York carry a large tonnage of live stock as compared with their tonnage in packing house products and dressed meats?

A. Oh, their tonnage on packing house products and fresh meats is larger than live stock. What the exact comparison would be I don't know, but I should say it is a great deal larger, the products in fresh meat, than it is in live stock—very much larger.

Mr. COWAN: I neglected to ask one question.

Q. I neglected to ask you the rate to Buffalo and Pittsburg from Chicago on cattle. Do you happen to know?

A. I have a memorandum that will give that. The rate on cattle from Chicago—this you understand is not our rate, because

515 we don't handle the business. I take it from the published tariff of the lines that do carry that freight, common information. The rate from Chicago to Buffalo on cattle is 17 cents per hundred pounds; on hogs 18 cents.

Q. What is it on dressed meat and packing house products?

A. On packing house products 18 cents; on fresh meat 27 cents.

Q. Is that the same rate to Buffalo?

A. To Buffalo and Pittsburg? Did I say that? I meant to.

Q. What is the distance?

A. 538 miles to Buffalo, I think, by the Short Line, and 438 miles to Pittsburg.

Q. Shipments by your line from St. Louis to points in the East, the rates are higher on dressed meat and packing house products than on the live stock, are they not?

A. St. Louis has the same relative basis to the East as Chicago; 116 per cent. from Chicago to New York, in proportion.

Q. When you are shipping from St. Louis to Nashville and Atlanta and Southern territory, that same relation between the rates exists, does it not?

A. No, I think not. You mean the relation between fresh meats and packing house products?

Q. Yes, there is a higher rate for the packing house product and dressed meat than on the live stock?

A. No, I can't answer that. I don't remember.

Q. The conditions with respect to traffic between the Mis-
516 souri river and points eastward, like Chicago, are of the very best and so considered in railroad circles, are they not?

A. Excuse me, I couldn't hear that.

Q. The conditions for handling traffic east of the Missouri river are good?

A. They are of the Western lines, yes, the lines in the West.

Q. There has been a growing density of traffic from year to year generally, has there not?

A. Yes.

Q. The volume of traffic is large and regular, isn't it?

A. What kind of traffic do you mean?

Q. Well, all kinds, constantly a heavy traffic on those lines?

A. Well, generally I would answer yes to that; large traffic; of course it isn't all uniform.

Q. The rates on corn, which you spoke of participating in to New Orleans, the present rate of 14 cents for export is from Kansas City?

A. No, that is from our Illinois stations.

Q. From the Illinois stations?

A. We haul, say a distance of 800 miles, or nearly.

Q. You participate in the transportation of corn that comes from Kansas City to New Orleans?

A. Yes.

Q. That is on a basis of 11 cents for your part from St. Louis to New Orleans, isn't it?

A. I didn't get your application of that rate.

Q. Seventeen cents from Kansas City to New Orleans?

A. Yes.

517 Q. Six cents difference between Kansas City *to* New Orleans?

A. That isn't exactly the way it divides, but we participate in the traffic.

Q. What is your revenue out of that class of traffic coming to Kansas City by way of St. Louis, to New Orleans?

A. We get about $75.00 a car.

Q. Do you recollect about the basis per hundred pounds?

A. About 11 cents.

Q. Well that is what I thought; six from 17 would leave 11?

A. It is not quite 11. I figured it would be about $75.00 a car, the way the loading is done, $75.00 to $78.00, somewhere along there. The distance is 700 miles.

Q. Do you handle California fruit?

A. Yes, by way of Omaha and some by way of New
518 Orleans. Not very much.

Q. That all comes on the basis of as low as 10 cents per car mile, does it not?

A. I do not ordinarily figure it that way, unless there is some special reason for it. The through rate is $1.25, the division is about 18¾ cents Missouri River to Chicago. It loads, I think, about 25,000 or 26,000 pounds, I have forgotten the exact loading, somewhere along there, 24,000 to 26,000.

Q. Do you participate in the other Pacific Coast traffic?

A. Yes, sir.

Q. All of the rates on Pacific Coast traffic are very low, are they not?

A. Yes, Oh yes, a low basis.

Q. All of that traffic would be moved at a lower basis of rate than the live stock per car mile, or per ton per mile?

A. No, the oranges would be somewhat better than live stock—Oh, on the present basis, no. I had in my mind figuring on a 20 cent basis. On that basis it would be a little bit in favor of the oranges, a good deal perhaps.

Q. Do you recollect what your rate is on bananas from New Orleans to Chicago?

A. It is on one of those sheets, I think, there. 47 or 48 cents a hundred pounds.

Q. And your rate on cattle, I believe you said was about 52?

A. No, I didn't give you any rate on cattle. No cattle are shipped from here to New Orleans. Oh, from New Orleans up here—I don't know what the rate is on cattle from New Orleans up here.
519 Q. I thought you said about 52?

A. No, I said about 50 cents a hundred on fresh meat from Chicago to New Orleans. I am not absolutely certain as to that.

The COURT: Call the next witness.

Examination of the witness KEEPERS by Mr. RANSOM:

Q. I understood you to say, Mr. Keepers, that if this 20 cent rate was put in—if the 23½ cent rate is supplanted by the 20 cent rate, you will lose about $67,000 a year?

A. Directly, yes, on the basis of last year's work.

Q. On the basis of last year. Now, would the traffic move in that zone, the 23½ cent zone, just the same as it did before you reduced that to 20 cents, or wouldn't it work a dislocation of those rates?

A. Well, I was going on the idea that business would be handled

the same way, of course, as showing what we would have lost on the previous year's business, done for 3½ cents less.

Q. Yes. But as a matter of fact, would the cattle and hogs move out of that zone in the same way they do now. They move now to the Missouri River and to Chicago out of that zone, don't they?

A. Yes.

Q. Yes. Now, then, wouldn't you lose also, in addition to what you have stated, something out of that zone that would add to your losses?

520 A. Do you mean on west-bound business?

Q. Yes.

A. Well, we might be compelled, perhaps, to reduce our rates into Missouri River points.

Q. They are properly adjusted now, reasonably related now?

A. There are no complaints that I know of, so I can safely assume that they are.

Q. If they are reasonably adjusted now, to change the through rate, as you might call it, of 23½ cents, would work a dislocation of the rates on each side, would it?

A. Probably people so regard it out there on business to the Missouri River.

Q. If they are properly adjusted now they would all be readjusted?

A. They no doubt would.

Mr. Ransom: That is all.

Mr. Cowan:

Q. If the rate to the Missouri River from Fort Dodge were not reduced, but the rate from Fort Dodge to Chicago were reduced 3½ cents per 100 pounds, how would that affect the market at Omaha?

A. I do not know much about the markets, how they would take care of their market.

Q. I mean the supply of live stock from Fort Dodge on the Omaha market?

A. Well, it would increase the advantage of Chicago and decrease the advantage, or work to the disadvantage of Omaha to the extent of at least 3½ cents a hundred.

521 Q. If it did not change the direction of the traffic, how would that be to the advantage of one or disadvantage of the other?

A. I don't know as to that. It might not change the direction of the traffic, because the river people might be willing to pay that additional amount, that loss or reduction, and still get their share of it.

Q. I understood you to answer the Judge that it would not change the direction of the shipment of a single carload, and I am puzzled to understand how that would be if it reduces the cost of shipping to Chicago, compared with what it would be at Omaha.

A. I don't think he asked the question in that way.

The Court: I so understood you.

Mr. COWAN: I just wanted to know now if the reduction of the rate to Chicago would not have the tendency of directing the traffic in that direction unless it was also reduced to Omaha in like manner.

A. Well, of course you might say in a general way that the reduction of a rate would have some tendency in that direction, in the way of inducing shipments the way the rate was reduced.

The COURT: I understood you to say it would not change a carload in your judgment if it was all put at 20 cents.

A. Your question was this, if I recollect it right: what would be the effect if the rate on packing house products and fresh meats were advanced to 23½ cents per 100 pounds, to the other basis, to the basis that was in effect before the Great Western's contract
522 came in effect—that, I understood, was your question—what would the effect be on business, would there be any change in business, and I said not a car.

The COURT: Well, suppose you put the live stock down, then what?

A. If you put the live stock down to 20 cents, with no other changes anywhere, it might result in an increase of business to Chicago, it probably would.

Q. That is what the General asked for, to 20 cents, how would it affect the Chicago market and Chicago shippers and Chicago commission men.

Mr. SEVERANCE: Not the Chicago shippers. The shippers are not complaining; they are satisfied—the Chicago commission men.

The COURT: I understand that this Association may be supposed to be acting in the interest of the shipper, they may be acting in their own interest.

Mr. SEVERANCE: It is a violent assumption.

The WITNESS: It is difficult to say whether a reduction of the rate——

The COURT: As I understood you, if your theory is right, the gentleman from Omaha and St. Paul are out of this case, there is nothing for them to talk about, because it would not affect them. The result would be, you people would lose a whole lot of money and it wouldn't help anybody at all.
523 Now, if that is true, that is one view to be taken of the case. If it is not true, that is another thing.

A. Well, they think they are affected.

The COURT: If it would not help anybody it would not hurt anybody except the railroad companies. Then the action should not be taken.

A. I think it would hurt the railroad companies, without any doubt, but my idea was that if the rates were restored to the original basis as they stood two or three years ago, I did not believe there would be any particular change in handling the business, because business would accommodate itself to it. The packers would pay the prices necessary to keep things going.

The COURT: You think that is true if you raised the 3½ cents, you think that would not change it.

A. I don't think it would.

Q. Now then, have you figured on the proposition if it was cut down to 20 cents?

A. I don't know that. Of course, the first natural thought is, it would induce shipments to Chicago, as a fresh thing coming up, just starting, everybody would be going in with the idea that it would bring in more shipment here, and the Missouri River packers would probably stir themselves pretty lively. They would think they ought to have some reduction, and they would appeal to the railroads for it. We might be compelled to make a reducton to the Mis-
524 souri River perhaps.

Mr. COWAN:

Q. Now, suppose it did increase the shipment to Chicago on the higher rate than prevails from that zone of country to South Omaha, wouldn't the question as to how much revenue you lose or gain depend upon the extent to which that traffic would be thus diverted to Chicago from your line rather than to Omaha or some other place?

A. Well, the rates of course to Omaha are lower than they are to Chicago, lower than the 20 cent rate would be to Chicago.

Q. Do you recall what it is from Fort Dodge to Omaha?

A. That statement, Exhibit No. 4, will show the rates. I don't remember what it would be for that distance, 135 miles; I don't recollect.

Q. Assume that it is 12 to 13 cents, then if it doubled the amount of your shipments from Fort Dodge to Chicago, it would more than compensate for the loss you sustained by reason of the reduction of 3½ cents in the freight rate.

A. We do not know that. Suppose we are hauling at just cost now, then we would suffer a good deal of loss.

Q. Now, where does the bulk of business go to today; take the hogs for example, shipped from Fort Dodge and from Western Iowa, to Omaha or Chicago?

A. To Chicago from Fort Dodge?

Q. From points west of there.

A. Points west of there, of course the nearer you get to Sioux City or to Omaha, why the more hogs go in that direction.

525 Q. In the zone where the 23½ cent rate applies, is it not true that the larger proportion of the traffic in hogs moves to the Missouri River market?

A. No. Of course, on our line to Omaha, my opinion is that more would go to Omaha, but there are not so many hogs down there, more cattle. But the old line, the direct line to Sioux City, the hogs would go to Sioux City largely. To put it another way: There are more hogs than cattle going to Sioux City, but there is more of both kinds going to Chicago until you get near Sioux City; then the hogs go in there of course.

Q. You give the total amount of damage claims, I understand, as about $39,000.

The COURT: You have been over that a good deal.

Mr. COWAN: I didn't go over that. I just wanted to ask him how

many carloads of live stock they handled during the year for which that statement was made.

A. There isn't anything made up on that, Mr. Cowan; I cannot answer.

Q. Do you have in mind approximately?

A. No, I could not answer it approximately.

Q. Where would you look to find that, to the Stock Yards' reports?

A. I could take the Stock Yards' reports from Chicago, Sioux City and Omaha, and tell.

Q. Or St. Louis?

A. Yes. I don't think I have the East St. Louis report. I could get it.

526 Q. If you had it, that is the source to which you look to ascertain?

A. No, I would look at them approximately, because there is a good deal of stock cattle moved on our line that does not go to the market. Simply bought, say, at Sioux City and shipped over our line in Iowa. There may be loss and damage on such shipments. Of course, it would be a small percentage probably of the whole.

FLETCHER C. RICE, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. Please state to the court your name?

A. Fletcher C. Rice.

Q. What is your occupation?

A. I am general inspector of transportation for the Burlington Road.

Q. With which of these defendants are you connected at present?

A. The Chicago, Burlington and Quincy.

Q. Have you been connected with any other railroad? If so, in what capacity?

A. I have been exclusively in the service of the C. B. and Q.

Q. I say have you heretofore been?

A. No, I say I have always been exclusively in the service of the C. B. and Q.

An adjournment was here taken until the following day, September 21, 1905, at 10 A. M.

527 SEPTEMBER 21, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Mr. DAWES: If your Honor please, at the time the petitio was filed in this case, the original petition before the Commerce Commission, the Chicago Burlington & Quincy Railway Company or Railroad Company then, the Hannibal & St. Joe Railway Company, the K. C. & St. Joe, The Council Bluffs, Omaha & Kansas City &

Eastern were made parties. Since that time the properties of the—of all except the Omaha, Kansas City & Eastern have been acquired by the Chicago Burlington & Quincy Railway Company of which company Mr. Rice is an officer, and the Omaha Kansas City & Eastern is also controlled but not acquired by the Burlington System. I wish it to appear that Mr. Rice is giving testimony in behalf of these different defendants as well in the whole case. In other words, they are practically eliminated as individual defendants and all owned by the defendant C. B. & Q. Railway.

528 JOHN H. RICE, resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. Mr. Rice, I understood you to state that your railroad experience has been altogether with the C. B. & Q. system?

A. Yes sir.

Q. I wish you would state in what capacity you have acted?

A. I commenced with the company as a telegraph operator and clerk, and since that time I have been despatcher, chief despatcher, train master, Division superintendent and superintendent of the Illinois Lines and general superintendent of the C. B. & Q. system, and then my present position.

Q. Well, have your duties related to freight matters or to transportation matters?

A. Entirely to operating matters.

Q. On that portion of your road which lies between the Missouri River and South St. Paul on the one hand and Chicago on the other, what is the maximum number of loaded cars of live cattle and hogs that can be handled by one engine at the speed that is required for that service?

A. About thirty cars.

Q. On that portion of your road, what is the maximum number of loaded cars of ordinary dead freight that can be hauled
529 by the same engine at speed which is required for that service?

A. About fifty cars.

Q. What is the average weight of the cars employed on your road in the transportation of live cattle and hogs?

A. The empty cars strictly empty, about fourteen and one half tons. With the ordinary bedding, about from fiftern to fifteen and a half tons.

Q. What is the average weight of the cars employed on your road in the transportation of ordinary dead freight?

A. From thirteen and a half to fourteen tons.

Q. On that portion of your road, what is the average rate of speed at which a train of live cattle and live hogs is moved?

A. From fifteen to twenty miles an hour.

Q. What rate of speed are ordinary dead freight trains moved at?

A. Five miles an hour.

Q. What is the average tonnage rating——

A. I perhaps should explain that. In arriving at the average speed

per hour for live stock, we divide the number of miles in the journey by the time consumed, from the time of starting to the time of delivery at the Union Stock Yards.

That does not imply that we do not run faster than fifteen or twenty miles an hour during the different conductors runs. We are obliged to make 25 and 30 miles an hour over conductors
530 runs, in order to make fifteen to 20 miles an hour from the point of starting to the point of delivery at the Union Stock Yards. In the case of dead freight, five miles per hour. It is generally agreed among railroad men that the speed of ten miles an hour during a conductor's run is economical and satisfactory and that it is necessary to make ten miles an hour during the conductor's runs in order to average five miles an hour from the point of starting to the point of delivery.

Q. By conductors runs, do you mean the time that you make between stations?

A. No, sir, I mean that in those different runs that you are considering, that is the different routes, the Missouri river to Chicago, for instance, there are four conductors runs.

Q. A conductor's run then means——

A. From Division point to division point, both through Iowa and from Missouri and that in order to overcome the delays of changing cabooses and changing engines and the necessary changes in the trains of live stock we must make faster time than fifteen or twenty miles an hour through conductors runs in order to average fifteen or twenty miles an hour from the point of starting to the point of delivery at the Union Stock Yards, and we require at least two hours after we leave our own lines in Chicago to arrive at the Union stock yards.

Q. What is the average tonnage rating of locomotives used
531 on that portion of your road in the transportation of live cattle and hogs?

A. From 800 to 850 tons.

Q. What is the average tonnage rating of locomotives used in the transportation of ordinary dead freight?

A. About 1250 tons.

Q. Take an engine that can pull a given number of cars over a given piece of railroad at the rate of 12 miles an hour, in your opinion what effect would the increase of speed to 18 or 20 miles an hour have upon the tonnage that could be pulled by that engine?

A. Increasing the speed from 12 to 18 or 20 miles an hour would decrease the tonnage 40 or 50 per cent.

Q. On that portion of your road what proportion of the trains in which live cattle and hogs are loaded is composed exclusively of cars containing live cattle and hogs?

A. I should say about one seventh.

Q. What proportion of the trains in which ordinary dead freight is carried is composed exclusively of cars containing that kind of freight?

A. About fifty per cent. In the answer to your previous question there, where I stated one seventh, that is a good deal of an estimate.

I could not give it with more accuracy than that. It is rather of an estimate.

Q. It is the best estimate that you can make from the re-
532 sult of your experience?

A. Yes, sir, the best estimate that I could make.

Q. On that portion of your road is preference given to trains loaded with live cattle and hogs over trains loaded with dead freight and packing house products or are all of them moved upon an equality?

A. Preference is invariably given to trains of live stock over trains of packing house products or trains of any kind, and frequently over passenger trains.

Q. Can you explain to the court instances in which a live stock train would be given preference over a passenger train?

A. Well, on our double tracks through Illinois it has been our practice for the last fifteen years to give stock trains the preference which is given no other freight train to run ahead of passenger trains. Until the last three years my headquarters has been at Galesburg, Illinois. Perhaps that is a point where there is more stock passing than any other point in the United States on any one railroad, and I have known hundreds of cases, yes, thousands of cases where we have started out three and four and five stock trains on the time of the passenger train which made Chicago ahead of the passenger train. I have personally held our No. 4 which was due to leave Galesburg at 11:45 at night I have held them until 12:30 at that station to let four or five stock trains *precede* ahead of her, on her time.

533 No. 4 was due at the Union Passenger Station Chicago at 7 o'clock. These trains all made, as a rule, made Western Avenue, a point about four miles from the passenger station ahead of No. 4.

Q. Well, was it only occasionally or frequently?

A. Frequently, very frequently. It was customary and it has been customary for twelve years anyway, to do that.

Q. What effect does that preference which you give to live stock trains over other freight trains, have in reference to delaying those other freight trains?

A. The effect is always or generally to retard the movement of the trains over which they are give precedence.

Q. On that portion of your road, what proportion of the cars intended for the transportation of live stock move to the points of shipment empty.

A. About eighty five per cent.

Q. What proportion of cars intended for the transportation of ordinary dead freight, move to the points of shipment empty?

A. About thirty per cent.

Q. On that portion of your road, is the movement of live cattle and hogs continuous throughout the year or are there periods when there is little or any movement?

A. The movement is generally continuous throughout the year.

There is no time at which it could be said that there was practically no movement.

534 Q. Well, is it uniform as well as continuous or does it fluctuate in quantity?

A. Yes, it fluctuates according to the market and the seasons of the year.

The COURT:

Q. Live stock you are talking about?

A. Live stock.

Mr. DAWES:

Q. Beef as well as hogs?

A. I understood you to say live stock.

Mr. BAXTER: I did say live stock.

Mr. DAWES: Including them all.

A. Cattle and hogs, live stock. I had in mind cattle and hogs.

Mr. BAXTER:

Q. You say it fluctuates in quantities during those periods when you are moving a larger quantity of live stock than usual? Does that increase or decrease the movement of other freight or does it interfere more or less than it would if your movement was not only continuous but uniform?

A. On certain days of the week when the live stock movement is the heaviest it frequently requires all the power that we have to move it. At such times ordinary freight must lie by and be delayed, and it frequently takes us two or three days to catch up and move the ordinary freight that has been stopped by the movement of the live stock.

535 I just recollect that our superintendent of transportation whom I met this week on Monday morning, and he had spent Sunday in Iowa. On Monday he reported that our Sunday night stock run into Chicago had 739 cars and that at Burlington on Sunday there were 500 cars of dead freight that could not be moved for want of power and that the Creston Division (that is the first division this side of the Missouri River) was entirely tied up so far as moving any freight except stock was concerned.

Q. Does that mean that you had to take the locomotives off of your dead freight trains in order to move your live stock trains?

A. Yes, it meant that we took every available engine to move the live stock.

Q. Are there any stock yards or stock pens on your road which are necessary for the transportation of live cattle and hogs that are not used for the transportation of dead freight. If so, state the number of them and their cost?

A. Yes, there are stock yards for the——

Mr. COWAN: I don't object to your stating the number, but I want to examine him about the cost and see what he knows about it.

A. Stock *yards* are necessary for the shipment of live cattle and

hogs and not necessary for the shipment of any other freight. Do you wish the number?

Mr. BAXTER: Yes.

536 A. We have 627 stock *yards* east of the Missouri River. Do you wish the cost?

Q. Yes.

A. About $1,054,000.

Mr. COWAN: I object to his stating the cost because it is not shown that he knows about it. I want to see where he gets his information.

Mr. BAXTER: That would be a matter for cross-examination.

The COURT: Objection overruled.

Mr. COWAN: I just wanted to note that I did not concede the competency of the evidence.

Mr. BAXTER:

Q. Are there any special facilities in addition to the mere enclosure that you provide at your stock yards, like tracks and water facilities and so forth?

A. At the ordinary stock yards?

Q. Yes?

A. Yes sir. It is necessary in all cases and we do have chutes and water. In many cases we furnish sheds, and in many cases we furnish in addition to the sheds, barns and bins and paving.

Mr. DAWES: Bins for what?

A. For sand. And then we have to furnish drainage and scales. In some cases tracks which are especially provided for the use of the stock yards and for nothing else.

Mr. BAXTER:

Q. Can you state the an-ual cost of the operation and main-

537 tenance of those stock yards, about?

A. About $100,000.00

The COURT:

Q. Per annum?

A. Per annum, yes sir.

Mr. BAXTER:

Q. What is the cost of box cars intended for ordinary dead freight to be moved in, and give me, also, the cost of your live stock cars, and state which of them deteriorates the faster?

A. The cost of our box cars is about $515.00. The cost of the stock *yards* is about $600.00, not including the cost of the feeding and watering facilities.

Q. Now which deteriorate the faster?

A. The stock car deteriorates very much faster.

Q. Which is the more expensive to maintain while it is in operation?

A. I have not any actual figures as to the cost of maintenance of stock *yards,* but I have the judgment of one of our most familiar

men who has said to me that it costs twice as much to maintain the stock car as the box car.

Q. When cattle or hogs get down in the car can they be gotten up without stopping the train, and if not, how much time is generally required?

A. As a rule, it is necessary to stop the train in order to get up the cattle. Ten minutes might be taken or one hour might be taken or it might be necessary to side track the train, to take the
538 car or cars to the stock yards, to the local stock yards and unload them and then re-load them.

Q. I suppose that is in cases where the——

A. The stock gets down and where they cannot get up without getting all the cattle out of the car.

Q. When live cattle and hogs arrive at markets in less than train load quantities, are the cars containing them carried immediately to the stock yards or are they held until one train load of cattle, a full train load of cattle and hogs can be obtained?

A. As a rule, they are taken immediately to the stock yards and not held for consolidation, but there might be cases and there are cases where if one train comes in with only one car or two cars or three cars and perhaps, another train and so on following each other with two or three, those will be held and thrown together and taken to the stock yards by one train; but as a rule that is not done. As a rule the stock goes immediately to the stock yards regardless of the number of cars that it has.

Q. Why do you hurry them from your point of intersection here at Chicago down to the Union Stock Yards, without regard to the number of cars that are on the train?

A. We are forced to do that, we are really compelled to do that in order to reach the market within the proper delivery time in order to overcome the obstacles we meet with on that road to the
539 stock yards where we come in conflict with trains of ten or a dozen other railroads.

Q. Are you required to do anything of that kind in the case of packing house products or ordinary dead freight?

A. No sir.

Q. Are any trains of live cattle or hogs run on your road in special trains?

A. Yes sir.

Q. What is the reason of that?

A. Why, on our branches or on any portion of the road where there is a sufficient number of cars in any cluster of stations or contiguous stations to make a train load, we almost invariably send out an extra and pick them up.

Q. Are there any other especial expenses incident to the transportation of live stock, live cattle and hogs, which are not incidental to the transportation of the dressed product of live cattle and hogs, or the transportation of ordinary dead freight? If so, I wish you would specify them as fully as you recollect them?

A. There are expenses that are incident to the transportation of live cattle and hogs that are not incident to the transportation of packing house products or of ordinary dead freight.

We receive all of our packing house products from a comparatively few points. The bulk of our packing house product is received at Kansas City, St. Joseph and South Omaha.

540 Packing house products is loaded by the shippers, the owners in carloads and it is delivered to the railroad company by those people in such shape and with such promptness and such regularity that we are able to depend upon it and on our schedule and regular trains to carry it.

Our passenger trains are not more regular or not so regular as the delivery of the packing house product to us in those three towns.

Well, then, when the trains are made up, whatever they may be like, packing house freight—if there is not enough packing house freight to make the required tonnage, it gives the railroad company an opportunity to gather other freight to put with it to make a complete train for Chicago.

The advantage of the schedule is, the time-table schedule is that it is an advertisement to everybody concerned, along the road of the time of that train. The train despatchers look for it and anticipate it. The yard masters anticipate it and they make arrangements for it. On account of its schedule and its regularity, it is very much more cheaply handled.

Then the packing house product train concludes when it arrives at our outer receiving yards at Chicago. The time is concluded there, our time-table is concluded there. Our basis of calculation on the time of the train concludes there and after it arrives there

541 the deliveries are made. The trains are switched and the deliveries are made by switch engines to the different places in the city.

But there is—that point is eight miles from the Union Stock Yards and while some of the packing house freight in those trains goes to the Union Stock Yards, it finds its way there by way of switch engines which deliver it. They consume a great deal more time than the road trains consume with the live stock that go immediately to the stock yards.

Then the live stock, the difference between the handling of the live stock and the packing house freight is that you do not receive full trains of stock at the Missouri River at any point. The stock that we haul in is stock that is picked up. It is not picked up on the main line between the Missouri river and Chicago, it is picked up on the branches that are tributary to the main line.

I should estimate that 70 per cent. of the stock that we bring in from Missouri and Iowa and Illinois into Chicago is loaded and hauled for a distance on the branch lines to the point of delivery on the main line. All of that costs. It costs more than it does to handle the same freight on the main line.

Q. Right there, I will ask you where the br-nch line intersects the main line, do you take off the locomotive on the main line and go up the branch line?

542 A. I was just going to say that we do not deliver the empty cars that are to be loaded on all these branch lines, on the day, as a rule, on the day that the stock is loaded. The cars, as a

rule, are distributed in advance. Oftentimes trains are required to go out on those branches extra trains with stock cars to deliver or distribute, and those trains frequently return light to the point——

Mr. DAWES: Light engines, you mean?

A. (continued). The engines return light, entirely light or with a very light tonnage. Now that operation goes on on most of the branches, that process and then when the stock is loaded, when the days come for the loading of the stock, these extra trains are run and then it becomes necessary to send frequently an entirely light engine and train out on the branches to pick up that stock and bring it in, bring it back to the junction point on the main line.

At that point, as a rule, we are through with that engine and crew. Occasionally it will run a few miles on the main line, to a destination, but as a rule it concludes with the main line.

Now, it becomes necessary for the main line train to pick that stock up, and the main line train that arrives at the junction point, to pick up ten cars of stock almost invariably comes to that
543 point loaded ten cars sufficiently light to pick that stock up. They don't bring other cars to that point and set them out and then replace them with the stock that they pick up. There is another thing that I meant to say about the packing house freight before I forget it.

The packing house stuff that is hauled from a comparatively few places is invariably hauled on our main lines. On our principal lines where there is the greatest economy. They are never hauled on any other line, and the empties returning are invariably returned by those same main lines and never by the branch lines.

Now, we have got the stock to take to the main line that has been loaded on the branch and it is picked up by the through main line trains and those main line trains must be loaded enough to make the run for the balance of the trip to the market fast enough to make up for the time or some of them time that has been consumed in the picking up of the stock at the different stations on the branches.

Slow time is invariably made on the branches, and it must be. When it reaches the main line it is expected that we will run faster and we do run faster.

Now the stock, when we start, say from Creston or Ottumwa—Well, I won't say Ottumwa, but a point west of Ottumwa, when we start for Chicago, say, with thirty cars of stock, that train
544 does not go through to Chicago with regularity as it started. There is a feeding point at Galesburg and a large part of the trains from Western Iowa feed at Galesburg. I was a few weeks ago at Galesburg and I personally saw a thirty car train arrive from the west when fifteen of the cars went through and fifteen fed at Galesburg. Now there we were in the midst of the run with a fifteen car train of stock. We could not afford to let that train go through to Chicago in that shape, and it had to be filled up and the train was held an hour and a half. Those fifteen cars were held an hour and a half so as to fill it up to go to Chicago. Those are some of the delays that are incident to the stock train and it

is a frequent delay and it is a serious delay and although we have tried, I have personally tried and others of our officers have tried to induce the shippers in western Iowa to refrain from feeding at Galesburg on the ground that it would be to their interest to go directly through instead of feeding, but they have persisted in feeding, through habit and with the idea that if they stop off at Galesburg and resting and feeding and leaving in the evening, that their stock will reach Chicago the next morning in better shape for the market. That is their principal reason.

Then the live stock en route must be looked after. We must stop to allow those in charge to look it over if they ask for it. In hot weather we are obliged to shower the hogs, to wet them,
545 which is done with water and oftentimes we have to pay for that water by the thousand gallons at stations. Then on arrival at Chicago, we run over the tracks of other companies in order to reach the stock yards from Rockwell street where we leave our own line, and we have to pay trackage and we have other expenses that foot up to about $2.25 a car; in some cases, $2.35 and in other cases $2.35 depending on the route that we take to the stock yards.

In addition to that expense there is the risk that we take in going over that four miles of road; a factor which we don't meet with on our own line, and which is owing to the fact that we are mixed up with the trains of several railroads, and we go there at all times of the day and night and in all sorts of weather, and frequently have accidents there that are expensive. Of course, there is the personal injury expense. Do you want me to mention that?

Q. Yes.

A. There is the personal injury expense in connection with handling the shippers of live stock that we meet with, which Mr. Crosby has testified to as being $5300.00 for the year ending June 30th, 1905. I presume that figure was correct but I never knew any other year to be correspondingly low.

Q. Do you provide accommodation for your stock men where they can get their meals along the road?

546 A. Yes sir. At Galesburg in 1889, I think it was, I arranged for the accommodation, I personally arranged for the accommodation of the stock men coming from the west and from the south to meet them at about a point a mile from our passenger station at the entrance to the stock yards, on about three days in the week and I assigned a switch engine and a caboose and a switching crew to meet each stock train when it came in and bring the shippers to the station so that they might get their dinners or suppers or breakfasts whichever it might be. In every case the train, when they finally left Galesburg for Chicago, stopped at the passenger house and picked these men up.

That practice has continued until, to my knowledge, until two years ago. Whether it has been continued since I could not say. I never heard that it was discontinued but I could not say that it is the practice now nor could I say that it is not. From 1888, or 1889 until that time, it was the regular practice. Also in Galesburg

yard I arranged a number of years ago and personally employed two men at certain hours of the day to patrol the point in the yard where the stock way cars and where the stock assembled so as to meet any men that might be there and to look after them and see that they were not injured.

Q. Do you have any special cabooses on your road?

A. Yes sir, we have a stock drover's caboose on our main
547 line. I had thirty of them made myself. I had thirty stock cabooses made that slept twenty-two men,—that slept comfortably twenty-two men.

Mr. DAWES:

Q. How much do they cost?

A. They cost about between ten hundred and twelve hundred dollars apiece. I also had eight way-cars made that cost about $450 apiece that did not provide for the conveyance of stockmen, way cars that would answer our purposes under all conditions—or under common conditions where stock was not handled. The large way car is a necessity of the stock men, we would not have it but for that.

Q. Do you have toilet rooms in those cars?

A. Yes, sir.

Q. And a lavatory?

A. No, sir, we just have one closet.

Mr. DAWES: Well, you have running water, don't you?

A. And running water.

Q. And bedding and all that sort of thing?

A. No.

Q. What amount of free transportation do you give per annum on your road to personal attendance of live stock?

A. We give free transportation to the men east bound in charge of two cars of stock. For the year ending June 30, 1905, if the men who came east in charge of stock had paid their fare in return to the points from which they started for that year, at the regular rate of fare, they would have paid $135,179.

Q. You give return transportation, do you not?

A. I said that if they had paid their fare—of course
548 we return them free, but if they had paid their fares at the regular rate they would have paid $135,179, during that year, but instead of that they were all returned free.

Now, for a long period, stock was shipped by the carload, and at that time the ordinary shipper thought it to his interests to put as many head of animals in a car as he could, and there were more heads put in the cars than could ride safely without injury. At that time the owners or *bona fide* employés were in the habit of accompanying stock and looking after it, and there was more of a necessity. At that time, however, the stock car facilities were much less than they are now and the speed on the road was much less, but since the change of basis from the per carload rate to the hundred pound rate, there is no longer the incentive for the stock

men to overload. It is for his interest to load the stock so that it will come through in good shape.

Now, since that time the habit and practice of the shippers and his *bona fide* employés of coming with the stock has very much lessened. The number of people that come with the stock is no less, but they are not the owners, and in a large majority of cases they had not even ordinary interests in the stock, sufficient to look after it.

549 Oftentimes they don't know how to look after it, but they are simply availing themselves of a comfortable ride, about as comfortable as a passenger train to Chicago and a free ride home.

Q. Do they go back on a freight train?

A. They go back on a passenger train. Now, I remember one case that occurred under my supervision, where we had a rear end collision, a few years ago, in the fog, between two stock trains, and there were five men killed in the car that was run into, which cost us over $20,000, the whole thing, the injured, and paying for the dead, the cost to us was over $20,000.

There was not one of those five men that had one cent's worth of interest in a hoof of stock in that train, and I happened to know each one of the five men personally. I knew that they were ordinary business men in little towns near my headquarters.

Q. Are they always stock men or do they belong to different callings or professions?

A. They were men in ordinary capacities of business. One of them was a lawyer and one of them was a doctor, and one of them was a merchant.

Mr. SEVERANCE:

Q. Was the lawyer killed?

A. Yes, sir, he was killed.

Mr. DAWES: That accounts for the large price.

550 Mr. COWAN:

Q. What did they have to pay for him?

A. I told Mr. Dawes at the time that I could pay for a dead lawyer, but I could not pay for a live one.

Mr. DAWES:

Q. Are any such privileges as that given to the shippers of packing house products or ordinary dead freight?

A. No, sir, people do not ride in charge of packing house product shipments and no passes are given on that account to my knowledge.

Mr. BAXTER:

Q. During the five years ending June 30, 1905, has the number of cattle and hogs moving over your road increased or decreased?

A. Increased.

Q. What was the size—what was your answer?

A. It has increased.

Q. What was the size and capacity in tonnage of your live stock cars in 1888, and what is the size and tonnage capacity of your present live stock cars?

A. In 1888 our live stock cars were 34½ feet long and eight feet wide, with a capacity of twenty tons. The present stock car is 36 feet long and 8 feet wide, may be a little more than that, and with a capacity of 50 tons—I mean 30 tons.

Q. How many live stock cars did your company have in 1888, and how many has it at present?

551 A. In 1888 it had 2633 cars. We have now 6345.

Q. In your experience how does the cost of transportation of live cattle and hogs, all conditions considered, compare with the transportation of the dressed product of cattle and hogs?

A. The cost of the transportation of live stock is considerably greater than the cost of the transportation of the product.

Q. How does the cost of the transportation of live cattle and hogs compare with the transportation of ordinary dead freight?

A. Well, it is very much greater.

Q. What is the difference between the cost of handling live cattle and hogs in through train loads from St. Paul and Missouri River points directly through to Chicago and the cost of picking up live cattle and hogs at way stations between St. Paul and Missouri River points on the one hand and Chicago on the other?

A. In my opinion the cost of handling live cattle and hogs from those points is much less in through trains than the cost of handling live stock which is picked up from intermediate points.

Now, in answering that question I don't refer exclusively to live stock that is picked up between—on our three main lines. We have a main line to St. Paul and had one to Omaha, and we had

552 one to Kansas City. They are three separate lines. I don't refer to the cost of picking up on those main lines exclusively. I include in that the cost of picking up the stock on the branches.

Those three lines,—the length of those three lines,—is about 1500 miles—a little less than 1500 miles. Those are 1500 of our best miles, but our stock comes from about 2700 miles of secondary or subordinate lines. There are really over forty separate railroads east of the Missouri River. They are districts or subdivisions to which engines and engine men and train crews are assigned particularly to those divisions and they are operated separately.

When you ask about the cost of picking up stock between the Missouri River and Chicago, I include those branch lines, because 70 per cent. of the stock comes from those branch lines, and in some cases travels as great a distance on the branch as it afterwards travels on the main line, to reach Chicago.

Q. What is the difference between the cost of handling the dressed or prepared product of cattle and hogs in through train loads from St. Paul and Missouri River points directly through to Chicago, and the cost of picking up live cattle and hogs at way stations?

553 A. The cost of picking up live cattle and hogs is much greater. The packing house freight is confined entirely to the main lines, and it has no connection with the branch lines. It is not handled on those interior lines as the stock is.

Q. Are there any packing houses located at stations on your road between St. Paul and Missouri River points on the one hand and Chicago on the other?

A. There is practically one.

Q. Where is that?

A. That is at Ottumwa, between here and the Missouri river.

Q. Does your road reach Des Moines?

A. We reach Des Moines with a branch but I am told we get no packing house freight there. It is on the main line of the Rock Island Railroad and we don't get any business there.

Q. State whether the live cattle and hogs which are transported from St. Paul and Missouri River points, on the one hand, and Chicago on the other, are transported in through trains, and state whether the live cattle and hogs are transported from intermediate points in through trains?

A. Live cattle and hogs are invariably transported from those distant points in through trains. The intermediate stop is uniformly picked up by local trains or special trains and not by the through trains.

554 Q. File as Exhibit No. 2 to your testimony a statement showing the names of all stations on that portion of your road which lies between St. Paul and the Missouri River points on the one hand, and Chicago on the other, at which stock yards and stock pens are located, showing the cost of the construction of said stock yards and pens, and the annual cost of maintaining and the operation of said stock yards, including weighing and other facilities peculiar to the stock business and solely used in the live stock traffic. I have already asked you for the aggregate.

A. It is in the paper there.

(Paper produced and filed as Rice Exhibit No. 2, attached hereto and made a part hereof.)

Mr. DAWES:

Q. I don't think you made any statement about the cleaning of stock cars. Did you ask him about that, Judge?

Mr. BAXTER: No, sir, I did not.

Mr. DAWES:

Q. Will you be kind enough to state, Mr. Rice, what is required in that direction, at the stock yards or where the *teaming* is done, and what the cost is, as far as you can estimate it.

A. We are obliged to clean the stock cars in order to preserve them and for the accommodation of the stock men. We clean some stock cars at Chicago, but mostly at Gales-

* * * * * * *

554*d* Valuation of stock yards, $1,053,983.00.
Annual cost of maintenance and operation, $100,000.00.
F. C. RICE.

555 burg.

Nearly all of the empty stock cars pass Galesburg on their return trip, and they are cleaned there. It costs us about thirty cents a car to clean them. *It costs us about thirty cents a car to clean them.* In the matter of the cleaning tracks, the cleaning tracks are always expensive tracks, and they are always in a remote position. They are a public nuisance, and it requires a long switch to switch the cars to and from that track, and I estimate that the cost per car is thirty cents, so it makes about sixty cents a car.

Q. Sixty cents, the switching charges thirty cents and the cleaning is thirty cents?

A. Yes, sir, and it makes sixty cents a car.

Q. Well, it is true, is it not, that all stock cars that are cleaned at Galesburg, all that are cleaned there, are hauled empty to that point?

A. Yes, sir.

Q. But they contain manure and offal and bedding, which is estimated at about how much weight?

A. Well, I have known cars to be unloaded with three tons in them.

Q. On the average they would contain?

A. I would call it about a ton.

Q. That is a very low estimate, is it not?

A. I should think that that is very conservative.

556 The COURT:

Q. What does that represent?

A. A ton.

Q. A ton of what?

A. Bedding of some description.

Mr. DAWES:

Q. And Offal?

A. Yes, sir, and offal.

The COURT:

Q. In one stock car?

A. Yes, sir.

Mr. DAWES: Bedding, your Honor will bear in mind, consists of gravel and sand. It is not straw bedding.

The WITNESS: I have often cleaned out cars that had three tons in them, actual weight.

Q. You heard Mr. Gardner's testimony yesterday, Mr. Rice. He stated, if I correctly remember, that if it were not for the necessity of cleaning these cars, his road would be able to do with perhaps 20 per cent. less stock cars, to handle their business, the same amount of business?

A. Yes, sir.

Q. Have you any ideas upon that subject? What do you think of applying that estimate to the C. B. & Q.

A. I think he is about right. I remember the time that he stated that it required to clean. It has always taken us a considerable longer time. It generally takes about two days, more often than it does one.

Q. We have something over 6,000 stock cars on the C. B. & Q., and 20 per cent. would be 1200, and the cost of 1200 stock
557 cars would be, in round numbers, $600,000?

A. Yes, sir.

Q. So, if we did not have to have facilities for cleaning the cars, and were not compelled to clean the cars, we would be able to save $600,000 in the investment in that particular direction?

A. Yes, we would be.

Mr. SEVERANCE: That would be over $700,000.

Mr. DAWES: $725,000 or $750,000.

A. Yes, sir.

Q. Now, by reason of the requirements of the law, or for any other salutory reasons, are you obliged to disinfect the cars?

A. Yes, various states have laws which we are obliged to observe, and it costs us about twenty cents a car.

Q. To disinfect?

A. Yes, sir.

Q. Do you mean that to apply to all the cars you use?

A. To those that are disinfected.

Q. What proportion of our cars are disinfected, or have you made such an estimate?

A. I think half of them.

Q. So you can probably say that ten cents a car on all our cars may be added for disinfection?

A. Yes, sir, easily.

Q. How much for cleaning and switching, what you said a moment ago?

A. Sixty cents.

558 Q. Then that makes 70 cents?

A. Yes, sir.

Q. By virtue of the 28-hour law, are we compelled to do anything in reference to these loads of stock, which we are not compelled to do with any other kind of freight?

A. Yes, but we are not very often caught, though, by that law.

Q. I don't mean the penalty provided by the law, but in order to avoid the penalty?

A. What I mean is that we usually handle the stock so that we are within the law.

Mr. SEVERANCE: That is, you mean to say that you run through in less than 28 hours?

A. Yes, because we don't haul any stock west of the Missouri River to speak of. We can generally make it, and if we don't make it, we stop to feed, but the feeding, as a rule, is the choice of the shipper.

Mr. DAWES:

Q. You stated that the average speed of the stock train from the Missouri River points to Chicago, was from 15 to 20 miles an hour?

A. Yes, sir.

Q. That includes the time taken up for delays and stops for picking up cars and everything?

A. I explained that, yes, sir.

Q. Did you mean that to be the time on through trains of stock cars?

A. I meant on all stock.

559 Q. The average pick-up train and the average through train?

A. All stock, yes, sir.

Q. Take the through trains, can you state what is the usual average running time?

A. Well, we don't handle many through trains. We used to handle through trains, and we used to make about twenty-four or twenty-five miles an hour with them.

Q. What is the time from the Missouri River to Chicago, do you know?

A. We have not any schedule trains.

Q. What is the running time which is usually required?

A. Well, about 24 or 25 hours.

Q. Is stock loaded regularly at Missouri River points, at definite times, as in the case of the Northwestern?

A. The Northwestern, you know, handles stock that originates on their own road from west of the Missouri River.

Q. Yes, that is a fact. Do we pick them up at definite hours?

A. Well, we don't pick up practically any at the Missouri River, but if we should have a train of stock, we do know of it sometimes for a week in advance, and we get ready for it. The Northwestern handles a good deal of stock.

Q. In reference to the ordering of the cars by the shippers on branch lines and other lines, how much notice do you usually have of that?

A. As a rule we have 24 hours' notice. That is, we get
560 notice today of a man's intention to ship tomorrow. Occasionally the market will change so that one part of the road—a man on one part of the road will want to ship some cars, or shippers will come in and want cars at the last moment, which you did not anticipate. Oftentimes that causes us expense by having to move empty cars from say over on this branch, to over here where they are wanted. Move them from the branch where they are not wanted over onto this branch where they are wanted.

Q. A redistribution of empty cars?

A. Yes, sir.

Q. You meet with nothing of that kind with packing house products or dead freight?

A. No, not with packing house products, because that all starts from a few places.

Q. Well, you do not meet with it?

A. Oh, no.

Q. Do you encounter any such difficulties as those which Mr. Gardner mentions, in the case of men ordering more or less cars at different localities?

A. Yes, sir.

Q. Because of their inability to tell what they will want?

A. That is one of the features of our branch expense. We will figure up today that we are going to have 20 or 25 cars of stock, we have orders for that many. We furnish the cars and send the crew out, and maybe it will all fall down and there won't be over 10 or 15 cars.

Q. That is a dead loss to you?

A. Certainly it is. You have got a half loaded train there,

561 you have got a train for half a train or less.

I have a hundred times sent out an engine and a crew on a branch thirty miles to get four or five cars of stock, just as an accommodation to that man. It is a service that we are giving to the stock, and always have given to the stock, that we don't give to any other commodity to my knowledge.

Q. Now, Mr. Rice, you spoke of frequent delays in Galesburg where stock was set out and fed, delays to the trade, and the train was therefore lightened and you therefore had to pick up other cars to make an economical train load into Chicago?

A. Yes, sir.

Q. That would necessitate the loss of the time to the extent of an hour or two or more in Galesburg?

A. Yes, sir.

Q. Is that time made up?

A. Yes, that is made up, and that is one of the obstructions that we have to contend with.

Q. So that it would run in under the circumstances which I have described, under a very high rate of speed?

A. Yes, we have that in mind. It reduces the running time.

Q. Does it increase the expense?

A. Certainly, it reduces the tonnage in the first place, and you have to cut off the number of cars that you would otherwise handle.

562 Q. How fast do you run under circumstances of such delay, from Galesburg to Chicago?

A. We come in at 25 miles an hour.

Q. You stated, I think, to Judge Baxter (and if you did I don't want to go into it again), that these stock trains took preference over all trains except passenger trains and in many instances over passenger trains. You described that?

A. Yes, sir.

The COURT: Cross-examine, Mr. Cowan.

Cross-examination by Mr. COWAN:

Q. Mr. Rice, to whom are these notices for cars given, when the orders are made, and what offices are they filed in in Chicago?

A. Well, the orders for stock cars are sent to the different Division Superintendents' offices. Either to him or to his chief train dispatcher who is uniformly the car distributer for the division, the chief train dispatcher is. There is no one in Chicago that undertakes to distribute definitely the number of cars.

Q. Have you examined the orders yourself to see whether it is a fact as you have stated, that the orders are given today for shipments tomorrow, for example?

A. Oh, yes, that has been by own experience for a great
563 many years.

Q. Will you get one month's orders—get the orders for a month, for the month of August, in your files of your Division Superintendent and have them sent over here so that we can examine them?

A. I think I can.

Q. Well, it is just on telegraph blank sheets, is it not?

A. Yes, as a rule, and that is followed, sometimes, but they are generally pinned on the ordering sheet.

Q. I wish you would get the orders for the month of August. I am under the impression that you are very much mistaken about that.

A. You mean as to the way of ordering?

Q. As to the date, a man ordering today for shipment tomorrow.

A. Do you think he orders today.

Q. I think he gives his orders two or three days ahead as a general rule.

A. Well, I think so too.

Q. I thought you said he would order one day for shipment the next.

A. I think, as a rule, he does, but I have had a letter come in three or four days in advance telling me that he wanted, some man I knew, wanted to ship on a certain date. I did not mean that stock cars were never ordered the second day in advance nor the third day in advance. I did not mean that. What I meant really was that they were not ordered later than that.

Q. It would be ordinarily perfectly foolish as a business
564 matter for a stock shipper to wait until the day before to order his cars unless he knew how you were situated about being able to furnish them?

A. Well, but the majority of orders, though, do come the day before, the majority do come that way, but there are many orders that come the second day before and the third day.

Q. Well, you get one month's orders and we will see how that is, will you?

A. Yes, sir.

Q. I am under the impression that it will average two or three days before the shipment?

A. Yes?

Q. I think you are mistaken about it.

A. Well, it might be a mistake, you know.

Q. Now, you spoke about there being a dead loss, in answer to

Mr. Dawes' question, to carry those stock cars out, if they are not used. Is it not a fact, Mr. Rice, and has it not always been the case in live stock shipments, that where you take and carry stock cars out from your division point to the point of shipment, that if the party does not have enough stock to fill your cars, that you use that car at that point for some other shipment, or some near by point?

A. Some other shipment on some other day.

Q. The loss to you would be the per diem cost for the car?

A. No. We have run a train out with those stock cars.

565 We have sent a train out and it is not loaded and we are losing the use of that stock car, if that is what you mean.

Q. The per diem loss of the use of the car is the loss to you?

A. Yes, and more.

Q. You don't claim that you lose the expense of carrying that car out there and bringing it back?

A. I certainly have made a wasteful use of expense if I have hauled a train of empties out and they are not loaded back.

Q. You simply lose the per diem cost of the car, don't you?

A. Why, no, sir, that is not all.

566 A. So if the stock don't load that day——

Q. You load somebody else's in the same car?

A. I know, but I have lost maybe all or a portion of the business I anticipated for that day for which I ordered my train sent there.

Q. Now do you mean to convey the impression to the Court that that is a usual course of business?

A. Of changing shipments?

Q. Of losing the use of the car, and parties ordering more cars than they want?

A. Oh, yes, that is an every day occurrence.

Q. In such class of business it *much* be an every day occurrence that such a thing would happen, but do you mean to say that men usually order more cars than they want?

A. I do not say usually, but frequently.

Q. They frequently order more?

A. He probably anticipates getting one bunch of hogs or cattle that he does not get for some reason or other, but he wants to be sure and so he orders more cars.

Q. It is the accident of his business that he orders more, not on purpose?

A. Oh, no.

Q. If the business turns out what he expected when he gives you the order a day or two before, then he only orders the cars he wants?

A. We do not complain of those things, but it is a matter we know about.

Q. I think your testimony has tended to leave the im-

567 pression that that is the customary course of business for the individual shipper.

A. It is very frequent.

Q. Name some of your prominent shipping points.

A. I don't think you will find a car distributer in the United States but what will verify that with me.

Q. That depends on what side of the case he happens to be on in my experience. Now name some prominent shipping points on your line?

A. Well, in what State, anywhere.

Q. Iowa, in this 23½ cent district.

A. Well, take Creston, or Red Oak.

Q. Creston. We will take that, stop at that one place. Who are the principal shippers from that place?

A. I don't remember the names.

Q. Can you name any one at all?

A. No.

Q. I want to see what the man says about it who orders those cars.

A. I could not call the names of any of our shippers but I would know them, and could get you the names, and perhaps you know them.

Q. Now what other, that is Creston, that is one.

A. Yes.

Q. What other point, name some other point.

A. Let us see——

Q. Don't you recollect the prominent shipping points?

A. Oh, I want to pick out good ones.

568 Q. You ought to have in mind two or three.

Mr. SEVERANCE: I don't think the witness should be lectured quite so much by counsel.

The COURT: I think counsel would better ask questions.

A. I could give you the Illinois points.

Mr. COWAN:

Q. Take Iowa points, is what I want.

A. Well, take Corning, Villisca, Cumberland.

Q. That will be sufficient. Now at any one of those points, can you name some of your principal shippers of live stock over your road?

A. No, I am not familiar with the Iowa names, that is, I do not remember them. I have met a great many of these stock men in Iowa, but I do not remember their names. But I would give you some names if you ask for them.

Q. Will you name an instance that happened in the last year at any one of those stations in which you have had to carry stock cars there when they were not loaded that you know of.

A. No, I could not, but I could find you plenty of them, I could not do it off hand.

The COURT: Bring them here some other time and that will dispose of that.

Mr. DAWES: Make a memorandum to do that.

Mr. COWAN: You said in answer to Mr. Dawes that you
569 would have saved $600,000 investment were it not for the fact that you have to clean cars, and you used the expression that it sometimes took two days?

A. Yes sir.
Q. Two days for what?
A. Two days for the cleaning process.
Q. Of how many cars?
A. Well, it would be say one hundred cars, 75 to 100 cars that we set in on the cleaning tracks.
Q. How much of your live stock do you bring into Chicago on Monday, what per cent.?
A. Of the whole week?
Q. Yes.
A. Why I should think we bring in a third of it.
Q. A third of it?
A. I think so.
Q. And how much do you bring in Wednesdays?
A. A third.
Q. So you have got two-thirds for those two days?
A. Yes sir. I should think the other third was distributed in the week. That is just an estimate.
Q. When those cars come in here on Monday you unload them that day don't you?
A. Yes sir.
Q. And you take them back to Galesburg don't you?
A. Yes sir.
Q. And you stop them off there for cleaning?
A. Yes sir, some of them.
570 Q. Now, what are you going to do with those cars between that and the time you are going to make shipments the next Saturday or Sunday for the Monday's market?
A. Why those cars are cleaned, maybe some of them are cleaned in one day and some are cleaned in two days, then they are picked up and sent on West.
Q. Yes. Now, as I understand you send stock cars back West at the same speed you bring live stock trains here?
A. No, I didn't say that.
Q. Some of the witnesses testified that.
A. I did not intend to say so.
Q. Is that a fact or not?
A. No sir.
Q. How much time do you take in carrying them back empty?
A. Well, we make ordinary time.
Q. About what is that?
A. About five miles an hour, five to ten. We may do a little better than that.
Q. Speaking in days, how long does it take you to get from Galesburg back to the points 100 miles east of the Missouri River?
A. I should say it would take two days.
Q. Forty-eight hours?
A. Yes, to take them back, and distribute them on the branches.
Q. Now, if you clean them Tuesday and Wednesday and you start back and get those cars out there in two days, you have got them back on Saturday and distributed?
A. Yes sir.

571 Q. Now why do you say that the cleaning of those cars delays you out of the use of the cars. You could not use them if you did have them cleaned?

A. I don't know about that. The cars may not all go to Western Iowa, they may go to points where they can be used.

Q. Now take Wednesday's shipments. You have got two-thirds of the total shipments coming in here on Wednesdays and Mondays, and take your Wednesday's cars and you clean them out there and you say it takes two days.

A. I said it often took two days. We may clean in one day, some of them.

Q. Then you carry them out in two days?

A. Yes sir.

Q. And you have still got them out and distributed before you need them for next Wednesday's shipments?

A. We load some stock every day in the week.

Q. But suppose you use the same cars in that identical service, isn't it plain that, considering the days on which the live stock comes in that you are not laid out of the use of the cars at all by the fact you have to stop and clean them?

A. We certainly are laid out of the use of them during the time that they are there.

Q. Well, what would you use them for?

A. Well, they would be used for loading perhaps.

Q. Who wants to ship any?

572 A. Or we could have a more economical haul of them going West if we could use our own time and crews in a natural way. We would not be forced to hurry them quite as much as we do. I know often times when stock cars should be cleaned, they are not cleaned. Orders will come from Chicago to those people out there not to clean any stock cars but let them all go.

Q. You don't clean them all here?

A. No, I never claimed we cleaned them all.

The COURT: You must clean the product too, refrigerator cars must be kept more clean than the others.

A. Yes. But we do not handle those packing cars, we do not do that.

Q. That comes in on the rate they pay for carrying of them?

A. Yes, the packers do their own cleaning.

Mr. COWAN:

Q. Do you use any private car line cars, Streets stable cars and the like?

A. Yes sir.

Q. Do you rent them by the month or year?

A. No, we pay six mills per mile.

Q. When you bring them to Chicago on a trip do you carry them back to Galesburg?

A. Well, we may or may not. We have a very fair supply of stock cars of our own.

Q. I know, but I was not asking you that. About private cars, do you deliver them?

A. I mean we try not to handle private cars if we can help it.

Q. So that you leave them in Chicago, you leave them to the private car company here?

A. Yes, sir.

573 Q. And when you get them, you get them already cleaned?

A. They clean them.

Q. Do you know what they pay by contract for cleaning cars here?

A. No, I do not.

Q. Does your road contract for cleaning cars?

A. We made one contract for cleaning cars.

Q. When?

A. Five or six years ago.

Q. Where?

A. At one place.

Q. Where?

A. A place called Gladstone, the first station this side of the Mississippi River where we have a place where we can unload.

Q. What do you pay for it?

A. 25 cents a car.

Q. Hasn't that been the usual contract price for years for most roads?

A. That is the only contract we ever made.

Q. Do you know of others contracting for it?

A. No, I do not.

Q. How did you know the basis of contracting at 25 cents unless you knew that to be the usual price?

A. Because we put section men in the cars and had them unload the cars for a number of years, cleaning them out and had them get at the cost as near as we could.

Q. Do you disinfect any cars for shipment from Iowa?

A. No sir.

Q. That is an expense that does not apply to that transaction?

A. No sir.

574 Q. The report of the Union Stock Yards and Transit Company will show the cars you deliver here per week, per months and per day?

A. Yes sir.

Q. Will you explain why it takes two days to clean the cars? You have say 30 cars in a train of cattle that come in from Galesburg to Chicago. You deliver the cars back that day or that night to Galesburg. Why does it take two days to clean those cars?

A. Well, at Galesburg for instance, my recollection is that we have two tracks that will hold about 60 cars each, about 120 cars. Of course if the track is empty the switchmen will go out, if the tracks are empty, and fill them up with cars; and perhaps if the cars are badly wanted we will turn in and clean all those cars in one day. If cars are not so badly wanted, we won't make so much of an effort and we will take a longer time. And sometimes the men fail us you know, they play out, they don't work at it.

The COURT: How long does it take to clean one car?

A. I should say that ordinarily a man would clean four cars in a day.

Mr. DAWES:

Q. In winter or summer?

A. Ordinarily I should say it would take longer in winter, and it depends on the condition of the car too.

Mr. COWAN:

575 Q. Now isn't it a fact that the cost of cleaning your cars out there which you estimated on the basis of 30 cents is for labor?

A. Yes sir, the labor of cleaning.

Q. Now you estimated another 30 cents for furnishing these side tracks for switching the cars out there?

A. Yes sir.

Q. How far do you have to switch those cars on to that track?

A. It makes about a four-mile switch.

Q. How many cars do you switch at a time?

A. Carry out at a time?

Q. Yes, switching.

A. It might be 60, 50 or 60.

Q. How many trains can a switch engine switch out there a day if engaged in that business?

A. Well, I could not say, but the figure that I gave you as 30 cents was the cost of switching in that yard per car for a month and I just took that figure.

Q. For all switching?

A. For all switching. Of course that took a train of stock——

Q. But in this instance you switched 30 or 60 cars out?

A. Yes.

Q. And your engine, if they are cleaned, brings back 30 or 60 cars?

A. Yes sir.

Q. Do you believe as an operating man that it is fair to say it costs as much per car for switching those cars as it does the average
576 switching and making up of cars and trains in your yards?

A. Yes sir, I would say it ought to cost more for the reason that this 30 cents, that is not a figure that was arrived at for use here, it was for our own convenience and that took in every car that came into the yards, and that figures it for some trains that come into the yards that do not require any switching, practically any switching, so that we get the advantage of that. And then there are cars like the Stock Yards cars, and the Industry track that cost more, but we took the whole number of cars and arrived at it in that way for the month and that was for our own information. Now I think those stock cars you are talking about would certainly cost as much almost — any car we have.

Q. Now, does it take 30 cents per car for all trains passing through Galesburg for switching service?

A. Yes sir.
Q. And that includes all cars in all trains?
A. Yes sir.
Q. Although some of them are not switched but come in in through trains?
A. Yes sir, but the cars are counted once.
Q. How much does it cost you for switching service at Chicago; what do you estimate the switching service per car at Chicago?
A. I think it is a good deal more. I have forgotten what the figure is, but it is a good deal more.
577 Q. Being an operating man you must have some idea about it.
A. I would just guess at it, that it is pretty near one dollar.
Q. That is in your own yard?
A. Yes sir, just in our own yards.
Q. What does it cost you on an average for delivery service made to other lines in Chicago, what do you estimate it costs you per car for delivery service?
A. I never made an estimate of that.
Q. What is your judgment about it from experience?
A. It depends on the line, it depends on where the delivery is made. I know of one delivery we make to the Belt Road at the end of our Hawthore Yards, of our main yards, which is a very short switch. I should say it costs less there to make that switch than it would one where we would have to go four or five miles to make it.
Q. Manifestly so?
A. Yes, but I haven't any figures on that. I don't think I ever saw any.
Q. There is a terminal expense at both ends of the line in handling that freight, isn't there?
A. Yes sir.
Q. And that is a considerable proportion of your operating expenses?
A. Yes sir.
Q. What is it at Kansas City, your terminal expenses there on the average per car?
A. Well, I could not say, I have not seen a figure on it—I don't know as I ever saw a figure from Kansas City.
578 Q. And you don't know?
A. I don't know.
Q. How much do you pay for the switching of packing house products and dressed meat cars that you receive at Kansas City?
A. That we receive?
Q. Yes?
A. I think $3.
Q. Three dollars a car?
A. I think Mr. Crosby told you just what that was, I think $3.
Q. What do you pay for switching charges on dressed meat and packing house products received at Omaha or Council Bluffs, wherever you get it?
A. Two dollars.

Q. Two dollars?
A. Yes.
Q. Now, is that on the west side of the river that you pay that?
A. On both sides. We get our packing house freight you know, from South Omaha principally, and that is $2.
Q. And that is $2?
A. Yes sir.
Q. And then you bring it across the Missouri River?
A. Yes sir.
Q. Do you own the bridge?
A. Yes sir.
Q. So you do not pay a bridge toll there?
A. No.
Q. What roads do not own bridges, and pay bridge toll?
A. I don't know of any. I think the Union Pacific owns the bridge at—do you mean at——
Q. South Omaha?
A. There is no other bridge there except ours.
579 Q. Except yours?
A. Yes sir.
Q. What is the bridge toll charged on your road to other roads for the use of that bridge?
A. None of them use it, no roads use it.
Q. How do they get across the river?
A. They get across you know, at Omaha.
Q. Well, Omaha then. I thought you meant Omaha.
A. No.
Q. What is the bridge——
A. We cross the river at Plattsmouth, just west of the Pacific Junction——
Q. I know where it is.
A. And run up to South Omaha.
Q. What do the other roads pay for bridge toll at Omaha in getting across to other tracks with packing house products?
A. I do not know.
Q. You do not know what the bridge toll is there per car?
A. No.
Q. Do you know what it has been at any time in the past?
A. No sir, I do not.
Q. Any live stock you receive at Kansas City you do not pay any switching charge on, do you?
A. Yes sir.
Q. What charge do you pay?
A. Oh, live stock, no, not any.
Q. You pay 50 cents a car for loading?
A. Yes sir.
Q. And that is your total expense on live stock, as against $3 for packing house products?
A. Yes sir.
580 Q. How far are the tracks where you receive the packing house products from the packing house?

A. I think about two miles, I am not familiar with that.

Q. When you take packing house cars back, do you take them to the backing house tracks, or leave them on your track?

A. We leave them on our track as I understand.

Q. And they get them?

A. And they get them.

Q. Do they charge you any switching charge for empties too?

A. I understand not.

Q. Now, when you come to Chicago with packing house products which you deliver at the Stock Yards, do you pay switching charges for that delivery?

A. We pay at the Stock Yards $3.40.

Q. And where do you deliver?

A. And providing the car is returned to us—providing the same car is returned to us, we pay $3.40 to the Stock Yards Company.

Q. Who do you pay that to?

A. To the Stock Yards Company and then if the car is not returned to us, we pay $1.40—if they should send the car on somewhere else, you know, and we should not get it back, we pay $1.40.

Mr. DAWES: You pay to the Junction Railway Company?

A. To the Junction Railway, yes sir.

Mr. COWAN:

Q. If they bring it back, $3.40?

A. Yes sir.

Q. So you pay $1.40 in and $2.00 out?

A. Yes sir.

581 Q. Do you receive back most of the cars that you take in with packing house products?

A. As a rule we do.

Q. And that is for the return of the empties?

A. Yes, sir.

Q. Received back loaded or empty?

A. Empty as a rule. Packing house stuff going through Chicago, we pay $2.

Q. And that is out of the 18 cent rate?

A. Supposed to be, yes.

Q. And when it is returned to you and you carry it back that is on the 20 cent rate, is it?

A. I presume so.

Q. You pay a cent a mile on the refrigerator cars both ways?

A. We pay three-quarters of a cent a mile on some, a cent on others, and 20 cents a day on others.

Q. Refrigerator cars?

A. Yes sir.

Q. Well the cars in which you ship dressed meat and packing house products for packers, you pay a cent a mile each way?

A. Yes sir.

Q. So the dressed meat and packing house products, it may be estimated at a cent a mile?

A. Yes sir.

Q. Now, do you settle on the basis of a cent a mile or on an arbitrary distance of 500 miles, making it $10 a car?

A. I suppose a cent a mile. I never have the settlement of those matters and really do not know any more than I am told by the Traffic Department.

582 Q. What distance is it by your line from Kansas City to Chicago?

A. 480 miles.

Q. Does that include the distance up to the Stock Yards?

A. It includes our tracks I think, to the River or just across the River, I don't remember just where the point is.

Q. It is estimated that $10 a car is the mileage on packing house products and dressed meat cars going to Chicago from the Missouri River and returning there, is it not?

A. You say it is estimated?

Q. I am asking you if that is used as an estimate of car mileage?

A. Yes sir.

Q. Now, if you use stock cars not belonging to your Company, you pay on the basis of six mills per mile for the use of those cars, both when going empty and loaded?

A. Yes sir.

Q. I understood you to say you load back 85 per cent.

A. Of the stock cars?

Q. Yes.

A. Yes.

Q. What do you load with?

Mr. DAWES: No, load back? No.

The WITNESS: No, I mean 85 per cent. go back empty. We load about 15 per cent.

Mr. COWAN:

583 Q. That is exactly what I meant. I stated it wrong. Of course I could not be misunderstood. I used my language wrong. In other words, 15 per cent. return loaded?

A. Yes sir.

Q. Where do you get those figures, Mr. Rice?

A. I got those figures from our Superintendent of Transportation, and that would be my judgment too, about the proportion that we load.

Q. And you load with what?

A. Well, we load oil and rails and ties and coal. We are in a coal district, and we load considerable coal in stock cars in winter.

Q. Where do you load the coal?

A. In Illinois, and Iowa and Missouri.

Q. Where do you carry the coal and railroad iron and stuff to?

A. It generally goes west towards Omaha, either on the main line in Iowa or to the River.

Q. You also carry back a small proportion of live stock sold as feeders to different places for feeding purposes?

A. Yes sir.

Q. In shipping in to and out of the Omaha Yards, isn't it a fact

that you ship in to the markets at Missouri River about as many loaded live stock cars as you return of live stock received at the Missouri River?

A. I think we do.

Q. Have you examined the report of the Omaha and Kansas City Stock Yards Company to notice how many you carried in
584 and how many you carried out?

A. I have not.

Q. That is the source to which you would resort to ascertain that information?

A. Yes sir.

Q. Is it not a fact that 90 per cent., or at all events a very high per cent. of the live stock shipped from western Iowa is bedded with hay and straw, furnished or paid for by the shipper, and a very small per cent. bedded with sand or gravel.

Mr. SEVERANCE: Shipped to Chicago do you mean?

Mr. COWAN: Live stock shipped from Western Iowa to Chicago?

A. Well, there are a good many cars that are bedded with straw and hay as you say, and perhaps more in western Iowa than any other point. I think in Illinois and eastern Iowa the Company does more bedding than it does in western Iowa. Some of those shippers prefer the hay and straw to sand.

Q. And they either pay for it, or supply it themselves?

A. Well, as a rule, if they do it themselves, we pay for it.

Q. If they do it themselves, then you pay for it?

A. We pay for it.

Q. You don't pay for the material?

A. Yes, we pay them for it.

Q. How much do you pay them?

A. 25 cents a car. We pay any bill that is presented.

Q. Twenty-five cents a car for the bedding?

585 A. For the bedding.

Q. Furnishing the bedding and putting it in?

A. Yes, and in some places we keep bedding of that nature ourselves, keep it there.

Q. When you keep the bedding there, you charge them for the material, don't you?

A. Oh, no. We keep the bedding and they put it in.

Q. And there is no charge?

A. There is no charge.

Q. What sort of bedding do you keep?

A. We keep sand and hay mostly.

Q. In hog shipments there is practically no bedding put in the cars, is there?

A. No, not for them.

Q. You said that the Stock Yards cost something over a million dollars, whatever the figures were?

A. Yes sir.

Q. Where did you get your figures from?

A. From the Division Superintendents.

Q. Have you taken the pains to ascertain what it would actually

cost now to build a set of stock yards of the description that corresponds with the classes of yards that you have?

A. Yes, they are estimated.

Q. Let us name some yard and see what class it is, and then we will get down to specific items.

A. The judgment of those men is, it would cost a good deal more to build these yards now than it cost previously.

Mr. DAWES:

Q. Why?

586 A. On account of the increased price of lumber.

Mr. COWAN:

Q. You don't mean to claim, do you, that your stock yards on your line as you have given there in Illinois and Iowa cost a million dollars?

A. And Missouri.

Q. Cost a million dollars?

A. Yes sir. That is, I do claim it because the Superintend-s have arrived at that estimate themselves with their Superintendents of Buildings, who have stock yards in charge and were asked to put a fair value on those stock yards, and that is their figures.

Q. Give me some one——

A. That includes our feeding yards.

Q. Well, give me some of your regular class of stock yards that you build on your line at some prominent shipping point. I don't mean the largest yard, you have two or three classes.

A. Yes. Well, I should say Monmouth, Illinois; Osceola, Iowa.

Q. Those are your large yards?

A. No sir.

Q. What size yards are they?

A. At Monmouth, we have got four stock yards. We have two roads that cross each other, of our own, and we have four stock yards there simply for the accommodation of the farmers, so that when they come in from the four directions, that they will be hit by one or the other. I was going to take one of those yards, or take the one at Kirkwood, the next station.

587 Q. Stick to the one station, what sort of a yard is it?

A. I will take Kirkwood.

Q. Why don't you stick to the first one?

A. The reason I dropped it, was because we had so many yards there.

Q. Take one of those yards at that place. Let us see what it is, what is the description of it.

A. Well, I couldn't describe the whole four, but I can think of one, which has pens, if that is what you mean, pens and sheds.

Q. I mean one of those yards you use there, estimating this cost on.

A. A well, and sand bin, I think.

Q. What is the size of the yard?

A. That I could not tell you.

The COURT: Scales?

A. And I think scales, but it doesn't make any difference whether we have scales or not. We either have to have scales or pay for the weighing.

Mr. COWAN:

Q. You have got a standard of stock yards of different classes. The Southwestern roads have, I don't know whether you have or not.

A. We have any standards for stock yards.

Q. You build any sort of stock yards?

A. We never had a standard.

588 Q. So there is no way to get at it to get any independent proof of what the stock yards cost because you have got no standards?

A. No.

Mr. DAWES: Yes, there is.

The WITNESS: No, there is not.

Mr. COWAN: Have you got any that were built by contract?

The WITNESS (to Mr. Dawes): He asked if we had any standard which he could use to arrive at the cost of the stock yards.

Mr. COWAN:

Q. There are certain specifications for certain classes of yards used by all roads in the Southwest, classes 1, 2, 3 and 4, perhaps.

The COURT: My understanding is, he says they are not so divided.

Mr. COWAN: No, he has given no classes.

A. No.

Q. So you have no regular specifications for stock yards?

A. We have no blue prints or specifications, or anything I could show you that would be a guide in arriving at the cost.

Q. Could you furnish a description of some of these yards? I would just like to have it.

A. I think I could, yes sir.

Mr. DAWES: What do you want, specifications and plans?

589 Mr. COWAN: I would just like to see—what is puzzling me is how these yards cost so much money.

The WITNESS: I understand.

The COURT: He will furnish you a description.

Mr. DAWES: I think he can give you a description.

The WITNESS: No, I cannot.

Mr. COWAN: He started out to do that but could only do it in a very general way.

Q. Your stock yards are about of similar construction, I suppose, except the size of the yards?

A. About.

Q. Is that true?

A. Yes, about. Of course, chutes are made in little different ways, different sorts, and different sorts of buildings—different super-

intendents and different superintendents of buildings have ideas of their own and they do vary, and their method of putting in the sand bins, or the barns or sheds may differ.

Mr. DAWES: And as to paving.

A. Yes, and of course, paving.

Mr. COWAN:

Q. Are your stock yards, the cost of the stock yards, carried on the Auditor's books of your Company as one of the items of expense of construction?

A. I don't think they are; I almost know they are not.

Q. When you build new yards, that is turned in as cost of new construction?

590 A. Oh, I don't think our Auditing Department keeps a record of the individual stock yards or stock yards as a whole, to know what they cost. I think any reference that we have ever had to make of it, we looked directly to the Superintendents. I know when I was Division Superintendent, I had a Superintendent of Buildings. At that time we made an annual report to the State of all the buildings that we had at each station, the character of them, and the value, and description, and I remember that that was one of the things that I reported.

Q. To whom?

A. To myself—well, I reported to the State.

Q. What State?

A. Our State, Illinois—I don't remember a number of years ago.

Q. To the Railroad & Warehouse Commision?

A. No, it was before that, a good while ago.

Q. Does the State Commission of Iowa estimate the value of your properties?

A. No.

Mr. DAWES: For taxes it all has to be estimated.

A. It was not for taxes. I have forgotten what the purpose was but I had to make a complete report of that sort.

Mr. COWAN: The reason I am asking you particularly about this matter Mr. Rice, is that where it has been actually estimated as to the value on plans and specifications of these stock yards, it shows enormously less than what is generally supposed.

591 Mr. DAWES: I object, your Honor.

The COURT: The objection is sustained, as a question.

Mr. COWAN:

Q. I wish you would examine when you leave the stand, or when it is convenient, in your Auditor's office, and see if you can find such construction of new yards as has been built in the last four or five years, the cost and if you can find the description of the yards, please do so.

A. Yes sir, I will be glad to do it.

Q. You said you didn't pick up live stock by through trains that left Kansas City with live stock?

A. As a rule. We might, you know, but we don't run, you know, through trains of stock from Kansas City.

Q. Do you run through trains from Omaha?

A. Very few from Omaha.

Q. Well, you do have live stock though, to carry almost every day from Kansas City and from Omaha to Chicago?

A. Well, I hardly think it every day.

Q. Well, every two days, then, or three days?

A. I don't think we have a half a train a week.

Q. Well, when you start out, suppose you have half a train, how do you carry them out?

A. Well, I think, my recollection is that we are quite apt what few straggling cars of stock we get into the meat trains, the packing house trains.

592 Q. That is just the point I wanted to ask you.

A. Either that or else into merchandise trains.

Q. And at what hour do you leave with those meat trains?

A. One o'clock in the afternoon.

Q. To reach Kansas City, or reach Chicago when?

A. They reach Chicago the next evening at six o'clock.

Q. How many cars of meat do you get a day?

A. We run two trains out of each of those places that carry meat, but it is very seldom that any one of those trains is full of meat.

Q. A full train of meat?

A. Yes sir.

Q. You fill that out with other freight if you have it?

A. Well, we most always arrange to have it for that.

Q. Those trains are regular scheduled, and regular numbered trains?

A. Yes sir.

Q. That will be 29 hours with that train.

A. Yes sir, that is 29 hours to our outer yard. Our time concludes at what we call Hawthore Yards. Of course the time for arriving at the Stock Yards is much longer than that.

Q. Now, you run your live stock through, you said in 28 hours, endeavor to do so?

A. In 24 to 28 hours.

Q. When you have a live stock train or a part of one that starts out from Kansas City or Omaha, if there is other live stock on your main line that they can put into the train, you always do it, don't you?

593 A. Well, I think that is done infrequently.

Q. If you don't have a train filled out and the live stock is there wouldn't you do it?

A. We would do it, but as a rule the shipper from those points, if we had one, would not want to be stopped for picking up. He expects a through run when he leaves Missouri River.

Q. If your cars come off of some other line into the main line, 10 cars, say, you could easily put them into the train and run along?

A. Yes sir.

Q. Doesn't that frequently happen?

A. It is not very often with a train that starts out from the Missouri River with stock.

Q. You run your engines light from Kansas City out East, just with the caboose for the purpose of gathering up this stock that comes in to your main line?

A. Yes, I think we do, I can't say.

Q. Name some of your branch lines where you ship most of the live stock off of?

A. Well, in Iowa, the Cumberland branch, the Hopkins Branch.

Q. Do any of those branches furnish as much as a train of stock in a day?

A. Yes sir.

Q. Take stock that arrives here Monday morning, don't those lines generally furnish a train or more for the Sunday shipment, Saturday's night shipment?

594 A. Yes, I think frequently they will furnish a train load, one branch will furnish a train load.

Q. Now, you run that train right on, do you not?

A. Yes sir.

Q. The engines making their regular division, your engines and crews?

A. Yes sir. That stock out there feeds you know, very largely stops at Galesburg and feeds quite largely.

Q. What proportion of the Western Iowa shipments stop to feed at Galesburg?

A. I should think 25 per cent. anyway of the stock that comes from West of Creston feeds at Galesburg.

Q. They don't feed there on account of the 28-hour law.

A. No, it seems to be—I tried to get them not to feed at Galesburg because I thought it was better for them and better for the railroad company, but they persist in feeding at Galesburg.

Q. What are the items of expense incident to carrying a train of live stock and a light engine and caboose through on your main line that picks up this live stock, that makes the latter more expensive than the former?

A. You are talking now exclusively about the main line?

Q. That is the one I am talking about now.

A. Yes, a train that starts out light has got work to do at the different stations.

595 Q. For what?

A. Picking up stock, you said picking up stock.

Q. Go ahead.

A. There is always more or less switching to do. Stock is not always ready loaded for the crew. They have to stop and help pick up. They are twice as long nearly, or much longer on the road than the other and apt to even get in overtime, although we aim not to be so long on the road as to get in overtime.

Q. As a rule you don't get in overtime, in picking up live stock?

A. You may in picking up live stock, but not as a rule, it would be the exception probably, when we do.

Q. Now, what are the items that make up the expense in doing

that business that are not incident also to hauling a through train over the same rails?

A. Well, the switching is the main thing, and the lightness of the load, the lightness with which you finally run, and the fact that you may go over half of the time, or the principal part of the line with a very small part of a train.

Q. Suppose you get a full train by the time you get 125 or 150 miles out from the Missouri River?

A. Why, that will be the end of the run of course.

Q. Suppose you get a full train by the time you get to the end of the run.

A. Yes sir.

Q. You get as much freight per car and per hundred
596 pounds from that run on to Chicago as you would have got if you had carried it clear through. Why isn't it more advantageous to make that light run through than it is to have hauled it for the same rate of freight from the Missouri River through?

A. Why it certainly is not.

Q. I am asking why it is not?

A. You mean we get the same rate of freight.

Q. Exactly?

A. Well, you can't run——

Q. You get a greater rate of freight as a matter of fact, but assume it is the same.

A. You can't do that—I think it is cheaper to haul the full train right from Kansas City over the division.

Q. I am asking for the items of that cheapness. You pay the engineers and firemen the same, pay them by the mile don't you?

A. Yes sir.

Q. You pay for the coal you burn?

A. There is a great deal of extra coal burned and a good deal of wear and tear doing this extra switching.

Q. Do you think there is more coal burned on an engine that runs light out of Kansas City and doesn't get a load than it does with a full train?

A. I think quite as much.

The COURT: It is the switching?

A. Yes, sir, it is the switching.

The COURT: That is all he mentions up to date.

597 A. It is the fuel that is used in the switching of the cars. We do not go right in and get hold of one car or five cars and pull out with it, or even if we did, that consumes coal.

Mr. COWAN: Well, how much would be the difference?

A. You know with a fast passenger train, you take the fast mail, with four cars and we burn just as much coal as another train with fifteen cars, another passenger train with fifteen cars that is making slow time.

Q. What is the difference in the cost of the coal in the two cases of a full train from Kansas City up to some division point, the first division point this side whatever it is, and a light engine that does

the switching and picks up a train by the time it gets there, what would have been the difference in fuel?

A. I could not say what it is, but I think we will consume more fuel on that pick-up.

Q. Are you right certain, do you know that you would?

A. I don't know, but I think we would.

Q. Well, what other item?

The COURT: He said the switching item. Now, if you want to ask what makes up the switching item that is all right. He mentioned coal and wear and tear.

Mr. COWAN:

Q. The cost of the switching item is whatever wear and
598 tear there is in switching?

A. Yes, and the fuel you use.

Q. The fuel you have mentioned those?

A. Yes sir.

Q. The rate of wages and the like of that is all the same?

A. Practically, that is if there is no overtime made.

Mr. DAWES: It is for the engine men, it is not for train men is it?

A. Yes sir, the same for trainmen.

Q. Are they paid by the mile?

A. Yes sir.

Mr. COWAN:

Q. Do these packing house product trains that leave Kansas City at the time you have mentioned, one o'clock in the afternoon, one of them run on a schedule time?

A. Yes sir, every one of them.

Q. Do they make the schedule?

A. Well, they make it pretty regularly. We have no market to run to on those trains. There is no claim if we are late. We aim to make it. Because it is a schedule and because we want to accommodate our patrons, but if we are one hour late, or four hours late there is no claim for damages.

Q. And no damage done?

A. And no damage done. And the train stops as I said, out at our outer yard. That is where we stop figuring on the train.

Q. Well, what proportion of the time will it run on time at the different stations and be on schedule time?

599 A. Why I presume it is on time a third of the time.

Q. A third of the time?

A. Yes, sir.

Q. And when it is not on time it is not the occasion of any damage?

A. No.

Q. Does that train take sidings for live stock trains to pass?

A. Yes, sir, if it is in the way of them.

Q. Well, does it get in the way of them?

A. Yes sir, that is of stock trains.

Q. Do you run that train on Sundays?

A. Yes sir.
Q. You run that every day in the week?
A. No, Mondays we don't run it.
Q. How is that?
A. We have the loading—no, no, we don't run it on Sundays.
Q. Your heaviest live stock movement, however, it does come out Sundays and Sunday nights?
A. Yes sir, our heavy stock movement in the week arrives here Sunday night between midnight and Monday morning at seven or eight o'clock.
Q. So that your heaviest stock movement does not interfere with that train and that train does not interfere with them because the heaviest stock movements are arrivals Monday morning or Sunday night?
A. Well, of course, that particular train is not apt to get in the way of stock trains in Illinois. In Iowa and Missouri I think it does get in the way of some of the stock trains, in fact I know
600 it does.
Q. And if *if* does it takes the siding?
A. If it does the despatcher puts it out of the way.
Q. And the stock train keeps going?
A. Yes sir, we give them the benefit.
Q. So that the stock train has the opportunity of a more regular run than that train does because it does not have to tak*ing* the siding for anybody.
A. Well, it has not the opportunity of more regular run. It is the most irregular train we have but it is given the preference.
Q. *What* is the stock train irregular if everything else gets out of the way after it is loaded coming to Chicago, what makes it irregular if you say everything else is out of the way?
A. The packing house product is on a regular scheduled train and the stock is on extras, as a rule and comes at irregular hours and we are likely to catch it at any time.
Q. Why should there be any irregular speed in a stock train if everything else gets out of the way?
A. Any irregular speed?
Q. Irre*f*ular speed?
A. Well I didn't mean irregular speed.
The COURT: Irregular trains he means.
A. Yes.

601 Mr. COWAN:

Q. What do you mean by irregular trains?
A. I meant an irregular train, not on the time table, stock trains are not on the time table as a rule on the main line.
Q. They are called "extra trains"?
A. Yes sir.
Q. And you know you are going to run them regularly at certain days in the week?
Mr. DAWES: No, he don't.
A. We know we are going to run those trains but they are so

unreliable as to the time that it would be foolish to schedule them because we could not hit the schedule.

Mr. COWAN:

Q. You don't know what hour you will leave the station?

A. No.

Q. But you endeavor to have them ready and leave at such times as you can get in here to the market?

A. Yes sir, we endeavor to do that.

Q. In doing that don't you have about as much regularity of your live stock trains leaving for the Monday's market from the different prominent shipping points in Iowa as you do for any other train passing those points?

A. Oh, no. The stock comes within a certain scope, within a certain limit, but within that limit you cannot tell whether it will be this hour or that hour, or some other hour.

602 Q. Do you mean to say you don't know what time of day you are going to get to the Stock Yards?

A. I mean the stock may be running between four o'clock in the afternoon or eight o'clock in the evening, and we may get that stock at five you know, and may get it at seven, just according to the success of handling it.

Q. Don't you have about a regular time for people to load out there in order to reach the market here?

A. Yes sir.

Q. And shippers all understand that don't they?

A. Yes sir.

Mr. DAWES: Do they do it?

A. Yes, as near as they can, but when I say a regular time, I don't mean time table time, but along about a certain time in the afternoon.

Mr. COWAN:

Q. That is what I mean?

A. The Superintendent or chief despatcher may telephone the agent that the train will be there about such a time.

Q. You said that you stopped trains to get up cattle?

A. Yes sir.

Q. Do you think that is a frequent or infrequent occurrence?

A. Well it is not as frequent as it used to be.

Q. Isn't it a fact that they are gotten up principally when you stop to take water, or at Stations for orders?

603 A. As a rule that is true but often times I have heard stock men ask the conductor if he would not stop at the next station and let him look over the stock. It is between those places.

Q. In running your stock trains from Galesburg into Chicago, you have no occasion to stop for stock then at any stations unless it is for orders, do you?

A. The through trains?

Q. Yes.

A. No.

Q. They run right on through without any occasion to stop?
A. Yes sir, except coal or water.
Q. Isn't that very largely the case after you get a full train load of stock from anywhere, that it makes more regular time, stops at less stations than other trains?
A. After it gets full, yes sir, it does not stop at any less stations that a through freight or through meat train.
Q. How is that?
A. It doesn't stop at any less stations than the through common freight train or a through meat train. It doesn't stop at any less stations, the through stock train.
Q. So there is no difference practically in the regularity of the run of the two?

Mr. DAWES: I object. The use of "regularity" is not a fair one.

604 The COURT: The objection is sustained.

Mr. COWAN:

Q. Is there any less regularity in the running of the two if it doesn't stop at less stations?
Mr. DAWES: He said so twenty times.
A. There certainly is.
Mr. COWAN: Why so?
A. Because of the very nature of the thing, the fact that you run fast, make fast time, you have hot-boxes, you have trouble with the train, the stockmen have got to see the train, we want to see the train, we want to look the train over and then there is more change, there is more apt to be changes in the stock train, even a through train than there is in the meat train or through freight train.
Q. At what time do you leave Western Iowa points, for the purpose of reaching Monday morning's market?
A. We leave, at some places, they leave along in the forenoon and then up to noon and in the afternoon. They aim to leave Creston about eight o'clock in the evening.
Q. Eight o'clock in the evening, what evening?
A. The evening that they ship, in the evening.
Q. For the Monday's market?
A. It would be for Monday morning's market, they would leave Creston about, they have been leaving Creston about eight

605 o'clock for Monday morning's market.

Q. Eight o'clock what day?
A. Sunday—Saturday.
Q. Saturday. How far is Creston from Chicago?
A. Four hundred miles.
Q. Now, taking the other shipments in that territory, is that about the rule, that you leave on Saturday night?
A. Yes.
Q. For the Monday morning's market?
A. Yes sir, about that.
Q. You said that you had 739 cars of live stock on Sunday to move, and that you had to tie up 500 dead freight cars?

A. I said we had—it was reported to me that we had 739 cars of stock in here Monday morning on the Sunday's run.

Q. Yes.

A. And that on account of the unusual number and the use of the power, that 500 cars of dead freight were tied up at Burlington on that day that could not be moved for want of power.

Q. Now when was that moved?

A. Well, I asked yesterday and I didn't find out.

Q. Well, it was probably moved within the next day or two.

A. Yes sir, within a couple of days.

Q. They probably moved within a couple of days after that?

A. Yes sir.

Q. Some the next day, some the next day and so on as your power came in?

A. Yes.

606 Q. What classes of freight do you pay loss and damage on for delay?

A. Well, I could not say all of the classes. I know we pay on live stock.

Q. And you pay on packing house product and dressed meat?

A. No, not unless it is a physical injury to the product.

Q. On ordinary dead freight don't you pay a lot of damages for delays?

A. Well, I don't know of any damages for delay, there may be, that don't come within my province.

Q. At all events you don't know of any?

A. I don't know of any.

Q. Will you *in*numerate the items that make up the cost of expenditures per train mile for moving a train from Creston into Chicago, not including the cost of maintenance of the way and the structure, the roadway, what are the items of cost of the mere matter of train service for moving that train from Creston to Chicago?

A. I don't think I could enumerate all of the items.

Q. What are the prominent ones that occur to you now.

A. Well, it would be the wages.

Q. At what rate?

A. Of a train, one train?

Q. Yes, the engine men?

A. Well, we pay our engine men 4.6 cents a mile, the engine men.

Q. And firemen?

A. Let us see, he gets 3.05 I think.

Q. Three and a half cents a mile?

A. 3.05 cents.

Q. 3.05 cents, excuse me. The conductor?

A. He gets 3.45.

607 Q. How many brakemen have you?

A. Two.

Q. How much do each of them get?

A. 2.30 I think it is.

Q. Do you know how much it costs per locomotive mile on the average on your system of road for operating your locomotives?

A. I don't.

Q. Do you know how much it costs per mile run for fuel, on the average?

A. No.

Q. Do you know how much it would cost for the fuel per hundred miles, for a run like that with 30 cars of cattle?

A. No, I never saw it figured.

Q. Those are all items which are contained in your annual report which your Auditor has?

A. I don't know, I presume so.

Q. At all events, that is the only source you would know to go to?

A. Yes sir.

Q. Do you know what it costs per mile on the average for the repair of freight cars per mile run?

A. No.

Q. Do you know what is estimated as an expense per mile run or per hundred miles run for repair of freight cars?

A. No, I do not.

Q. Is it not a fact that on your branch lines there are regular trains that have to operate in order to keep up the service you have to perform anyway every day?

A. Yes.

Q. Is it not a fact that all of those regular trains on the
608 days when you are moving stock, carrying live stock in and the empty cars back for distribution?

A. Yes sir, some portion of them.

Q. Have you any definite figures with respect to the life of a live stock car?

A. I have not. I tried to find that out.

Q. Have you inquired of the owners of private stock car lines here to ascertain that fact?

A. I have not.

Q. Have you any definite figures as to the average life of the ordinary box car?

A. No, not any definite figures.

Q. Or the refrigerator car?

A. No.

Q. Why do you say the stock car would deteriorate faster than the other?

A. Well, it is because of its construction and usage, the use it is put to, and the fact that the floor rots out much more rapidly than any other car that I know of unless it would be a refrigerator, those I don't know about; but they rot out much more rapidly than a box car and the water, you know, runs down the post into the joints and rots them out, and just the rotting process, it deteriorates in that way besides the usage which it gets from animals.

A recess was here taken until 2:00 o'clock p. m. Thursday, September 21, 1905.

609 SEPTEMBER 21, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon JOHN H. RICE resumed the stand for further cross-examination by Mr. Cowan:

Q. What part of the road of the C. B. & Q. System do you work on, Mr. Rice?

A. At the present time the whole system.

Q. The whole system?

A. The whole system, but my experience has been principally in Illinois, and for two years in Iowa.

Q. Do you know what the average number of loaded cars per train mile is on the system?

A. I could not give it. Twenty something, but I could not give it exactly.

Q. Less than twenty isn't it?

A. No, I think it is over twenty.

Q. More than twenty?

A. Oh, loaded cars, excuse me. No, I don't remember what the loaded cars are.

Q. I believe you stated what the average loading per loaded car was but I don't recollect it.

A. No, I did not, that is I did not only in the stock, I did
610 not, generally.

Q. Generally, what is that, if you know, the average loading per loaded car mile on the system?

A. Well, I could not give that.

Q. Is it not a fact in the conduct of the railroad business that you must have some schedule trains to carry the traffic or that in the actual operation you do have them?

A. Yes sir.

Q. Is it not a fact that those trains go, whether they have got a loading equal to the engine capacity or not?

A. Yes sir.

Q. Does it not happen——

A. That is not all of them, but some of them do.

Q. Well, it happens that some of them go that way?

A. Yes sir.

Q. Is it not a fact that it often happens that you must return the crews which do the service whether they have got a load to return with or not?

A. Yes sir. But for a great many years across the state of Illinois the only schedule freight trains that we have had have been local freight trains, way-freights and the product trains and the merchandise trains west bound. No other freight train has been scheduled for quite a number of years, just the local way freight and the packing house trains east bound.

Q. Without attempting to say what proportions of your
611 trains have been scheduled, whether they are scheduled or not, the crews which go with the train to the west must return to their division point in a certain time, isn't that true?

A. Yes sir.

Q. Otherwise you would have to pay them for overtime if they are regular crews?

A. Yes sir.

Q. The extra crews, what you call extra men, you can call where you please, is that true?

A. We can c-ll them when we please, but they are the particular ones to whom we pay the over-time. That is, a schedule train that goes from A. to B comes back to-morrow, has its pay adjusted for that lay over at the opposite end; but the extra man that goes on, his time counts from the time that he starts till the time that he gets back so that, if we hold him at the terminal we are paying him for the time that he lays over whether he does anything or not.

Q. Do you mean that if you start a man from Galesburg to the next division west, at Burlington——

A. Ottumwa would be the next point.

Q. That when he takes the train that is run as an extra that that conductor and brakeman and the engineer and fireman are paid for the time that they lay over at Ottumwa?

A. It does not happen to be so in that particular case, because it has been decided—Our schedule arranges that that is a
612 trip from Galesburg to Ottumwa and a trip from Ottumwa to Galesburg; but there is an intermediate place from Burlington to Ottumwa that is called a return trip so that if you will use that illustration, so that if you start a train from Burlington to Ottumwa and back, which is done every day, several of them, then you pay these men from the time they start till they get back so that if they are afforded a schedule rate of speed of ten miles an hour, you pay them all their time and that is the way with all of those trains that go on the branches for stock or anything else.

Q. So that when a man starts out, he is entitled to so many miles run or you pay him for the overtime if in making those miles he don't make ten miles an hour?

A. Yes, especially so with the extra trains.

Q. Now, doesn't it happen in the conduct of your railroad business therefore,——

A. What is that?

Q. Does it not happen in the conduct of your business that you have to run a great many trains with a light engine loading or you have got to pay more for the time of the crew when they are not in fact at work, do one or the other?

A. Yes, you have to pay for a good deal of light running, of course.

Q. You have got to do one or the other?

A. Yes, and our principal payments for light runs is on the branches.

613 Q. Doesn't it happen therefore, that your train loading, your average train loading can never show up to your locomotive capacity, isn't that true?

A. Well, it depends on the traffic, on the character of the traffic.

Q. Has it ever done it in any instance that you know of?

A. Yes sir.

Q. How is that?

A. Yes sir.

Q. Do you mean to say that the average for a year's time or six months time would show that your average train loading was up to your locomotive capacity?

A. I don't mean exactly that, but I do mean that we have sections of the road where the average tonnage is very close to the average capacity of the engine, that is our rating of the engines.

Q. Where?

A. Well, it is particularly between Kansas City and St. Joseph and it is between St. Paul and here. Not St. Paul and here possibly, but between St. Paul and Savannah and in our coal territories.

Q. You are talking about coal trains, are you?

A. I was not talking about coal trains, I just mentioned them there. I meant all capacities.

Q. It appears from the statistics in the report of your road that the average loaded cars per train for the year 1904 was 18 and the average number of empties on the train, 7. The tonnage
614 revenue, tonnage per train mile, 284. Now, assuming that those figures are correct, is it not a fact that that is very much below the tonnage rating of your engines hauling your business?

A. That is net tons, of course, that you are talking about.

Q. That is what I am talking about.

A. Of course, we have got some tare there that I don't know, you know, how much it will increase that.

Mr. SEVERANCE: That don't include the weight of the cars?

A. No, I say the tare, we have not got that.

Mr. COWAN:

Q. On an average, what are your high class engines capable of hauling of revenue freight per train mile?

A. That varies very many times, you know, in the different divisions and subdivisions of the road.

Q. Dependent upon the grades?

A. The grades, yes sir.

Q. Is it not a fact that an engine can haul a great deal more freight from Galesburg to Chicago than it can from Kansas City to Galesburg?

A. Well, not a great deal more, but it can some more.

Q. Is it not a fact that they can haul more from Galesburg to Chicago than over any division in Iowa?

A. No.

Q. What division in Iowa, can you haul as much over?

615 A. Well, they can haul about as much over the Ottumwa Division and over the Burlington Division. That would be

from Creston to Ottumwa and Ottumwa to Burlington. I would just like to qualify that by saying that we do haul practically as much between Ottumwa and Burlington and Creston and Ottumwa as we do from Burlington to Chicago, but it is done by assistance.

Q. Now is it not a fact, that you start out with a train where you have better grades from Ottumwa to Burlington, and you have got heavier grades from Burlington to Galesburg, that you cannot stop to load up your engine so as to secure your capacity over each division?

A. Oh, no, all trains must be loaded so as to get over the maximum grades on a conductor's run.

Q. Take thirty cars of cattle from Creston to Ottumwa and Ottumwa to Burlington, you would not try to load out that train from Burlington to Galesburg with other cars?

A. No.

Q. So that you get your maximum strength of the engine from Burlington to Galesburg, but you don't get it on any one of the other three divisions, is that true?

A. Well, that is not exactly true, but practically it is.

Q. Can you explain how it happens that on the average of your train loading, you load eighteen loaded cars with a tonnage equal to 15 tons per loaded car mile on an average for the year,
616 when your locomotives are capable of pulling very much more than that amount of tonnage?

A. Well, of course, you don't take the gross there, you don't take in the empties.

Q. I don't take the gross. You cannot figure any gross, that would make more than your engine rating. 284 revenue tons per mile.

A. From the figures as I understand that you read there, those are the train tonnage, which I understand to be the net tonnage.

Q. The revenue tons?

A. Revenue tons. I cannot consider that because I do not know what the tare was, that is the empty weight of the cars, the empty cars in the train.

Q. I have called the empties in addition to the loaded cars, seven empties and eighteen loads?

A. That is over the whole railroad?

Q. Yes.

A. That is not over the particular territory that you are considering, I don't think.

Q. Why not?

A. That is over the whole railroad, that takes all the inferior branches.

Q. Don't this live stock shipment take in the inferior branches?

A. Yes, Well, now, I cannot——

Q. What traffic—Were you going to say something more?

A. Well, go ahead.

Q. What traffic loads the least revenue tonnage compared to the weight, the dead weight of the car?

617 A. I think the stock does.

Q. Are you certain of that?

A. I should think it would.
Q. What is your minimum rate on dressed meat?
A. 22,000 pounds.
Q. 20,000 ain't it?
A. 22,000, I think.
Q. The minimum weight in your schedule?
A. I think so, I am not certain.
Q. Well, assume it is twenty. It averages about 22,000?
A. Yes sir.
Q. How much does a refrigerator car weigh?
A. About eighteen and a half tons.
Q. Are you certain that is correct?
A. Yes sir.
Q. And the ice and salt?
A. Yes, eighteen and a half tons.
Q. 37,000 pounds?
A. Yes sir.
Q. And the ice and salt?
A. With about five tons of ice.
Q. Not five tons of ice, you don't mean that?
A. 5,000 pounds.
Q. That would be 42,000 pounds?
A. Let me see.
Q. 37,000 and 5,000 would be 42,000?
A. Why no. The car weighs eighteen and a half tons.
Q. That is 37,000 pounds.
A. And the load is 11 tons.
Q. 5,000 pound of ice and salt making 42,000 pounds?
A. Yes sir.
618 Q. And 22,000 pounds of dressed meat?
A. Yes sir.
Q. Cattle will load about 23,000 pounds on the average?
A. Yes sir.
Q. A cattle car will weigh about fifteen and a half tons?
A. Yes sir.
Q. Plus the manure?
A. No, plus it, I mean including the manure.
Q. 15½ including the manure?
A. Yes, I think it would.
Q. So that the percentage of dressed meat to the gross weight of the car is less than the—than in the case of the cattle.

Mr. DAWES: That is a matter of figures, anyway. I don't think the witness ought to be called upon to take the time.

Mr. COWAN:

Q. Now let me ask you if in any case there would be more in a train than twice as much weight of the car as the contents of the car? The car would never weigh more than twice as much as the contents, would it?
A. No. Of stock, you mean?
Q. Of anything, is there any freight like that?

Mr. DAWES: Wouldn't it depend on how much there was in the car?

Mr. COWAN:

619 Q. Is there any carload freight where the car would weigh more than twice as much as the load?

A. I don't recall anything.

Q. Isn't it a fact that it costs more to handle less than carload lots and local freight, than carload freights per ton?

A. Yes sir.

Q. How much more, in your opinion?

A. Well, I could not give a figure on that.

Q. What are the ratings of the engines that do the business on your line of road?

A. Well, on the line of road we have a great many types of engines.

Q. Take the principal type that haul the live stock traffic and dressed meat products from the Missouri river on your main lines?

A. 180,000 pounds on the drivers.

Q. What is their capacity?

A. Well, they have 200 pound pressure and 180,000 pounds on the drivers. Now what do you mean?

Q. Their capacity on the different classes of trains.

A. We average from 800 to 850 gross tons on stock and about 1,000 tons on packing house freight, 1250 to 1500 tons on ordinary freight.

Q. Have you taken the pains to ascertain definitely just exactly what these engines will haul of the competitive products you have mentioned?

620 A. Yes, we have taken a great deal of pains, you know, to arrive at what is a train load for these different classes of freight.

Q. Those matters are all reported to your general office?

A. Yes sir.

Q. Were you in the service at the time when Dr. Darious Miller was Vice President of your company??

A. Yes, he is now.

Q. And Mr. Delano was your General Manager?

A. Yes sir.

Q. Whatever figures you ascertained in these matters are reported to your general office?

A. Yes sir.

Q. Do you use a 36 foot car in the carriage of live stock?

A. Yes, principally.

Q. What is the light weight of those cars? They have a stenciled weight upon them called the light weight of the car. What it that?

A. It is about 14½ tons.

Q. Are your cars built upon substantially the same pattern as the average 36 foot cars used by other railroads?

A. I think they differ, they are different than the Northwestern, anyway.

Q. In what particular?

A. I could not describe the difference, possibly the Northwestern is a little heavier car.

The COURT: How is that material. Do you want to go
621 into all those details now?

Mr. COWAN: I don't want to go into that with other witnesses, but Mr. Gardner, in my judgment inadvertently, perhaps, magnified a great many of those items and I am sure from the examination that he is mistaken in regard to them.

The COURT: The way to get at those things would be to get the size of the cars accurately without having the witness guess about it.

Mr. COWAN: We have no statistics unless we send somebody out to look after them, to look at the cars themselves.

The COURT: What good would it do if you got it? They would have to go out and look at them. Then they would have the right to say that that is not true. I will sustain the objection to that cross-examination.

Mr. COWAN: Your Honor would not sustain the objection on the question of the weights of their cars?

The COURT: The next man that came on you would say that you would want to cross-examine him because this man did not know.

Mr. COWAN: If I knew any other way to do it I would do it.

The COURT: Send a man out to examine them and measure and find out, if it is material. What I am trying to do is to stop unnecessary examination.

The WITNESS: I have not guessed at any of the weights that I have given you but of course, I don't know about the North-
622 western.

Mr. COWAN:

Q. Your 36-foot cars weigh about 14½ tons light, do they not?

A. Without anything in them at all.

Q. Do you know what the weight is of the private car line cars like the street stable cars, and others?

A. No, I don't. I think they are a little heavier.

Q. You spoke of your trains running five miles an hour with ordinary dead freight?

A. Yes sir.

Q. The schedule which you have furnished me shows the schedule of your regular schedule trains, does it not?

A. I don't think there is a dead freight on that schedule.

Q. What do you mean by "dead freight"?

A. I mean ordinary freight trains.

Q. Are they all run as extras?

A. They are run as extras, principally.

Q. What are those schedule trains intended to carry?

A. If you have the Creston Division there, from Omaha, the two first trains there,—there are six passenger trains there and then two

freight trains. No. 70 and 74. Those are both packing house trains and the next train is a local train.

Q. They carry packing house products and dressed meats?

A. The—Two trains there are carrying packing house products and dressed meat and the next train is a local or way freight
623 train.

Q. Do your packing house products and dressed meat trains afford sufficient tonnage to carry practically all of your through traffic from those points to Chicago?

A. No. That is, after taking the packing house freight we generally fill up with other freight, but not all.

Q. Are the trains which are run other than those which are scheduled run on a less rate of speed than the schedule trains?

A. Well, the stock trains are unscheduled, and of course they run faster.

Q. I mean the extras which carried other freight than live stock.

A. No, they don't make as fast time as the time of the two trains here.

Q. What do you consider the proper speed to get the maximum service out of an engine and the maximum service of an minimum cost from the crew?

A. It is generally thought by railroads and among railroad men and it is our judgment, that ten miles an hour is a profitable speed and we have tested our tonnage and rating and that is the capacity of the engines on the speed of ten miles an hour, assuming that they are confined strictly to dead freight. Now, if that is 100%, we call that 100%. Now, the stock or meat train is running some per cent. light of that.

Q. A train of that class is expected to run at whatever speed it can down grade and on level ground?

624 A. Yes sir.

Q. And at ten miles an hour on your maximum grades, isn't that true?

A. No, they won't make ten miles an hour on the maximum grade, they may not make over five, but we aim to have them make ten miles an hour from the commencement of their run to the completion of their run.

Mr. DAWES:

Q. Just one question. You stated that some of those stock cars went back loaded with coal. Stock cars from the Missouri river to Chicago. They don't get their coal loaded at Chicago, do they?

A. No.

Q. Where did they go for their coal load?

A. Some of it is loaded in Illinois and some in Missouri and Iowa. Middle Missouri and Middle Iowa and southern Illinois.

Q. It contemplates a considerably empty run before they get there?

A. Yes, the stock cars go out of their way quite a good deal in order to get the loads, if that is what you mean.

Mr. RANSON:

Q. Mr. Rice, you spoke of giving live stock trains coming to Chicago the right of way over passenger trains and freight trains and that ordinary freight trains laid by to give the live stock train
625 the right of way and that it required all your motive power to move the live stock trains at such times and that all this was done for the purpose of hastening the live stock trains to Chicago. Now, I will ask you whether if the same efforts were made and the same energy put forth and the same facilities offered in moving trains with live stock from the 23½ cent zone to Missouri River points there would not be a stimulation of the live stock shipments to those points?

The COURT: To where?

Mr. RANSON: Missouri river points.

A. I presume so.

Q. As a matter of fact such facilities and such energy are not put forth in that zone towards the Missouri River as are put forth to carry these trains to Chicago?

A. There is not the volume of business.

Q. There is not such care taken to hurry the stock to the Missouri River points?

A. No sir.

Q. You don't give the trains carrying live stock to the Missouri River market such preference over passenger trains or freight trains as you state are given to the live stock trains coming to Chicago?

A. Not in any respect.

Q. Your train schedules are all so arranged as to facilitate the shipments to Chicago, not necessarily arranged with that object in view, but your train schedules and train arrangements have
626 that effect?

A. Yes sir.

Q. No such care is observed as to the trains carrying live stock from the 23½ cent zone to the Missouri river?

A. No sir.

Mr. SEVERANCE:

Q. What you have said with reference to the character of the service that you give to Chicago as compared with Missouri river points would apply likewise to a comparison between Chicago on the one hand and South St. Paul on the other? You don't give any of this extra service to shipments into South St. Paul?

A. I don't think we have much of it, but then we would not, there is no occasion to do it.

Q. Your road runs up the Mississippi river into St. Paul?

A. There is no special effort made on the stock into St. Paul.

Q. Any more than there is to the Missouri river?

A. No.

Q. You bring out from South St. Paul cattle and products, both?

A. Yes sir.

Q. But you make no effort to stimulate the shipment of cattle

from Wisconsin points on your line which are much nearer to St. Paul than they are to Chicago, into St. Paul, do you?

A. No sir.

627 Re-direct examination by Mr. BAXTER:

Q. You were asked with reference to the average tonnage of live cattle and live hogs per train mile. You were asked about your annual report, what it contained in that regard. Did you include in that estimate the movement of empties out to the points of shipment?

A. No sir.

Q. You were also asked with reference to the weight of the empty live stock car. Did you take into consideration the sand bedding which is usedz?

A. Yes, I stated that our empty cars, our 36-foot cars weighed about 14½ tons, the naked car without any bedding of any sort.

Recross-examination by Mr. COWAN:

Q. How many empties do you haul back when you take home the empties with the engine going back to the western point, from Chicago to Galesburg, say?

A. Well, of course, we have to run just as many trains west as we run east, and we are not particular about that number of cars. We don't save any crews.

Q. Your crews have to return, anyhow?

A. Yes sir.

628 Q. Is it not a fact that the heaviest tonnage of freight is considered west bound?

A. No sir. It may not produce but——

Q. Take the average for the year.

A. When the conditions are normal our tonnage is supposed to be east bound.

Q. Heaviest for the east bound?

A. Yes, and for twenty years I never saw it a day other than east bound, but not recently, not within ten years.

Q. What is the capacity of your 36-foot cars in tonnage?

A. 30 tons.

Q. You identify this as being your schedule?

A. Yes sir. (Referring to a paper.)

629 J. H. HIGHLAND, called and sworn as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. BAXTER:

Q. Mr. Highland, what is your occupation?

A. Third Vice President of the Chicago Milwaukee & St. Paul Railway Company.

Q. How long have you been connected with the Freight Traffic Department of railroads in the United States?

A. In an official way upwards of twenty five years. Longer than that in other capacities.

Q. With what railroads have you been connected during that time?

A. Chicago, Milwaukee & St. Paul, the Chicago, St. Paul, Minneapolis & Omaha, and as arbitrator of various lines running from here to St. Louis and the Missouri River. I will, however, say that that was in passenger service only.

Q. Did your duties during that period have relation to the making of freight rates, and if so for what portion of that period?

A. Well, I should say more than twenty five years. I can give it to you exactly if necessary, but upwards of twenty five years.

Q. I wish you would file as Exhibit No. 1 to your testimony a statement of carload lots and less in cents per hundred pounds
630 now charged on cattle, hogs and packing house products respectively in carloads from the following points: Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Omaha, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul, Ottumwa, Des Moines, Marshalltown and Cedar Rapids, respectively?

A. I have such a schedule here.

(Paper produced, marked "Highland Exhibit No. 1 F. B. D." and is attached hereto.)

629a HYLAND EXHIBIT No. 1.

Rates on Cattle, Hogs, Packing House Products, and Fresh Meats, in Carload Lots, to and from Points Shown Below, in Cents per Hundred Pounds, as Carried by the Chicago, Milwaukee and St. Paul Railway, September 21, 1905.

To Chicago		Local rates.	When from beyond.	When for points east of Chicago.
From—				
Kansas City	Cattle	23.5	20	
	Hogs	23.5	20	
	P. H. P	20		18.5
	F. M	20		18.5
South Omaha	Cattle	23.5	23.5	
	Hogs	23.5	23.5	
	P. H. P	20		18.5
	F. M	20		18.5
Sioux City	Cattle	25		
	Hogs	25		
	P. H. P	20		18.5
	F. M	20		18.5
South Saint Paul	Cattle	25	20	
	Hogs	25	17.5	
	P. H. P	15.7		14.6
	F. M	17		15.7
Ottumwa and Marshalltown	Cattle	22		
	Hogs	21		
	P. H. P	16		16
	F. M	16		16
Des Moines	Cattle	22		
	Hogs	23.5		
	P. H. P	18.5		18.5
	F. M	18.5		18.5
Cedar Rapids	Cattle	21		
	Hogs	18.5		
	P. H. P	13.5		13.5
	F. M	13.5		13.5

Q. I wish you would state Mr. Highland, whether the rates on cattle and hogs set forth in said Exhibit No. 1 and the rates from your intermediate stations to Chicago are just or unjust, reasonable or unreasonable and give your reasons for any opinion you may express?

A. The rates on live stock in my opinion do not bear a just proportion in the contribution to the total revenue derived for the transportation of freight carried by the Chicago, Milwaukee & St. Paul Railway Company as adjusted between the points mentioned. The reason for that is the stress of competition that exists at the lower end of our line, which makes it necessary to meet a short line rate over a longer distance as we go north on the Missouri River where the rates are, by reason of the competition and the markets,

631 necessary to be held on a parity in order to enable the industries located at the various points to market their products in competition with the markets located at near by, what we may call the source of supply or the originating points, that can handle the business from the Missouri River and the Mississippi river and Chicago. What I mean by the Mississippi River is St. Louis, being a distance of only 277 miles to Kansas City and the adjustment of rates as between St. Louis and Chicago holding arbitrarily between St. Louis rates and only five cents at the outside above the adjustment from the Missouri River, for the shorter distance to St. Louis.

Q. Are the rates on cattle and hogs mentioned in your Exhibit No. 1 in this case affected by competition between markets as well as between carriers?

A. Yes sir.

Q. Did the number of cattle and hogs produced in the territory affected by the rates on cattle and hogs mentioned in your exhibit No. 1 in this case, and the money value of said cattle and hogs increase or decrease during the period between 1900 and 1905?

A. Well, they increased. I say the business has increased. I think that the increase is due more to the general development of the country than it has to the influence perhaps of freight rates. I do not think that the question of freight rates as they exist at the

632 present time between the territory or between the points you mentioned, the Missouri River on the one hand and the large consuming markets on the other, that the increase has been influenced by the freight rates necessarily. That is the production of the raw material.

Q. Well, have the freight rates been so high as to prevent the business from increasing?

A. Have the rates been higher?

Q. Have the rates been so high as to prevent the traffic from increasing?

A. Not in my opinion, no sir.

Q. Are the freight rates on cattle and hogs from the points of shipment mentioned in your Exhibit No. 1 to points of final destination greater or less than the sum of the local rates between said points where the through line is made up of two or more railroads?

A. The local rates are higher than the proportion of the through rates from the Missouri river to the markets mentioned.

Q. But is the through rate from any Missouri river points to Chicago higher or lower than the sum of the local rates from the Missouri River or some intermediate place plus the local rate from that intermediate point?

A. No sir.

Q. Which is it, higher or lower, the through rates? My question is, are the through rates from points on the Missouri river to Chicago higher or lower than the sum of the local rates from the Mis-
633 souri river and some intermediate point plus the local rates from that intermediate point.

The COURT: Are they lower or just the same?

A. Well, I don't know that I quite catch that, but I will answer it in this way so as to be clear in answering what you want to ascertain, if I understand your question properly.

We will take the rate from Missouri River to Cedar Rapids local and the rate from Cedar Rapids to Chicago local *versus* the rate from the Missouri river to Chicago and the combination is higher.

Mr. BAXTER:

Q. That is what I wanted to know. How do the rates on cattle and hogs set forth in your Exhibit No. 1 and the rates from your intermediate stations to Chicago compare with rates charged by other railroads in the same or other parts of the United States for the transportation of cattle and hogs from other points of shipment to other points of destination and distance and other matters being relatively considered.

A. I can only answer that question by producing the rates as they exist for distances. I don't know what influences governs the making of rates to other markets outside of the territory that the C. M. & St. P. Railway serves and they fix their rates with reference to conditions as they find them in competition with the roads
634 reaching the same sources of supply and going to the same destination or consuming markets.

For example, I don't know what governs the rates between points in Illinois, Indiana, and Ohio to Chicago for the same distances that we make our rates from points west of the Mississippi river. I am not familiar with that territory and therefore I am not competent to state how they compare, I don't know. I can only file what the tariffs indicate without expressing any opinion as to their reasonableness or unreasonableness.

Q. Have you prepared a comparative statement of that kind?

A. I have, I have a statement of that kind made.

Q. Will you file that as exhibit No. 2 to your testimony?

A. Yes.

(Paper produced marked Highland Exhibit No. 2 F. B. D." and attached hereto.)

635a HILAND EX. 2. No. 14.

Compared Statement Showing the Rates in Cents per 100 Pounds on Live Stock to Chicago, Ill., as Compared with Rates on Live Stock to Other Markets for Like Distances

Actual distance.	From—	To—	Group.	Cattle.	Hogs.
297	Bidwell, Iowa.	Chicago, Ill.		22	21
300	Hershey, (4) Neb.	So. Omaha, Neb.	300 mi.	22	29
298	Winship, S. D.	Sioux City, Iowa.		27	30.3
304	Newark, S. D.	So. St. Paul, Minn.		22	25
326	Maxwell, Iowa.	Chicago, Ill.		22	22.5
329	Benkelman, (2) Neb.	So. Omaha, Neb.	325 mi.	23	30
323	Bowdle, S. D.	Sioux City, Iowa.		26	30
321	Harlem, N. D.	So. St. Paul, Minn.		22	25
347	Sewall, Iowa.	Chicago, Ill.		22	23.5
353	Spearville, (1) Kan.	Kansas City, Mo.		24	28
357	Big Spring, (4) Neb.	So. Omaha, Neb.	350 mi.	24	31
353	Zeeland, N. D.	Sioux City, Iowa.		27	32
351	Bowdle, S. D.	So. St. Paul, Minn.		24	30
376	Jamaica, Iowa.	Chicago, Ill.		21.5	23.5
374	Sears, (1) Kan.	Kansas City, Mo.		24	28.5
368	Julesburg, (4) Colo.	So. Omaha, Neb.	375 mi.	25	32.5
373	Straburg, N. D.	Sioux City, Iowa.		27.5	32.5
371	Selby, S. D.	So. St. Paul, Minn.		27.5	32.5
403	Churdan, Iowa.	Chicago, Ill.		23.5	23.5
394	Ingalls, (1) Kan.	Kansas City, Mo.		24.5	30
410	Sidney, (4) Neb.	So. Omaha, Neb.	400 mi.	28	36
402	Chadron, (3) Neb.	Sioux City, Iowa.		28	35
391	Evarts, S. D.	So. St. Paul, Minn.		28	34
427	Manilla, Iowa.	Chicago, Ill.		23.5	23.5
420	Wallace, (4) Kan.	Kansas City, Mo.		25	30.5
429	Potter, (4) Neb.	So. Omaha, Neb.	425 mi.	28	36
414	Whitney, (3) Neb.	Sioux City, Iowa.		28	37
421	Oberon, (5) N. D.	So. St. Paul, Minn.		24.5	31
452	Portsmouth, Iowa.	Chicago, Ill.		23.5	23.5
448	Hartland, (1) Kan.	Kansas City, Mo.		25.5	31
447	Kimball, (4) Neb.	So. Omaha, Neb.	450 mi.	29	38
456	Harrison, (3) Neb.	Sioux City, Iowa.		28	39
450	Leeds, (5) N. D.	So. St. Paul, Minn.		24.5	32.5
473	Underwood, Iowa.	Chicago, Ill.		23.5	23.5
477	Medway, (1) Kan.	Kansas City, Mo.		25.5	31
479	Dixon, (2) Colo.	So. Omaha, Neb.	475 mi.	31	41.5
463	Van Tassel, (3) Wyo.	Sioux City, Iowa.		29	41
477	New Salem, (5) N. D.	So. St. Paul, Minn.		26.5	
502	Luton, Iowa.	Chicago, Ill.		24	23.5
501	Granada, (1) Colo.	Kansas City, Mo.		26.5	34.5
503	Hardin, (4) Colo.	So. Omaha, Neb.	500 mi.	33	42.5
503	Keeline, (3) Wyo.	Sioux City, Iowa.		33	45
506	Glenmullen, (5) N. D.	So. St. Paul, Minn.		28.5	

(1) A. T. & S. F. R'y. (2) C. B. & Q. R'y. (3) C. & N. W. R'y.
(4) Un. Pac. R'y. (5) Nor. Pac. R'y.

Q. I will ask you in your experience and observation as a freight traffic man whether there is any such invariable rule as necessitates that the same rate shall be charged on the raw material as is charged upon the manufactured product?

A. I have in mind a case where the manufactured product is charged materially less than the raw material. I have no doubt but that investigation will disclose numerous cases where the
635 manufactured product is less than the raw material.

Q. Mr. Highland, in the south a great deal of cotton is produced. In the New England states there is no cotton produced. There are cotton mills in the south that manufacture what is known as cotton factory products and there are also mills in New England which manufacture cotton factory products. Would the rate on the raw material, the raw cotton in this case, necessarily have to be as low as the rate on the cotton factory products from southern points to New England?

A. If I was engaged in the handling of the traffic I would make the raw material, if possible, I would make the rate so that the raw material would be used as near where it is raised as possible and to ship it out to New England if I could get a higher rate than the manufactured product, I would make it.

The COURT: Why would you do that?

A. Why would I do that?

Q. Yes.

A. I would do that for the purpose of developing the country that the railroad for which I was employed might increase their traffic and they would increase it by reason of getting a great population, more passenger traffic and more incidental freight traffic and would encourage the further development of the soil itself. Instead of having 160 acres cultivated I would want 640 cultivated and to do
that I would make it an object to have the material manufac-
636 tured so that it could be placed in less bulk and distributed where it would in the end realize to the producer a greater value than would the raw material it shipped into New England in the larger volume.

Q. Wouldn't you take into consideration what would pay your company the most in doing all this?

A. I am figuring on what would pay the company the most in my opinion.

The COURT: In the end, but that is the number of years, perhaps. Would it not be your duty to your railroad company to figure the tariff so you would get the most out of it?

A. Well, we are not figuring, Judge, on the immediate future. When we built our railroad into South Dakota, if we had figured in that way we would have a very much less population. Now, the greater the population the greater the revenue produced for the railroad serving it and developing it.

Q. You have not followed that theory in this most business in this country, have you, except in the last year or two?

A. Well, that is true, but if you will go back to the history of the rate making and the difference that is charged on cattle and packing

house product, you will find that the theory upon which the rates were originally made was entirely different. The conditions were different, and in the course of evolution, these things have
637 come on so that it is now possible to carry the finished product at a great deal less than we were able to carry the perishable article when the rates were originally established.

So that the theory in making of rates on this particular commodity that I am testifying about, the theory of making the rates on the cattle higher or the same or less than on the finished product, has been reversed. When we moved the finished product of hogs 25 or 30 years ago, it was not the way we move them now. They could only be moved from December until March and they were moved dressed. Therefore, the rates made and the risk assumed was a great deal more than they are now.

The revenue produced was less relatively and therefore we charged a higher rate so that in the fixing of rates we have been governed very largely, I admit perhaps not through good judgment, altogether or a careful study of the question but by tradition rather than conditions. Tradition is what has had a great deal to do with the making of these rates and the continuing of them.

638 The COURT:

Q. Away back before any public authority had anything to do with a rate on the finished product of hogs and cattle, the rate on them was two or three times as much as on the live stock?

A. The rates on live hogs, or what we used to call dressed hogs, they were rated in the merchandise class, and we used to get second-class rates. In those days we got a car rate for live stock and the cars were much smaller. The conditions for handling them were very inferior. The time was much slower and the expense of taking care of them at the point of shipment and destination was entirely different from what it is now.

Q. Refrigerator cars have made the difference, have they?

A. Yes, sir, refrigerator cars.

Q. Nobody discovered that, this difference, until the Great Western came in and made this contract, is that true?

A. I cannot admit that that is so.

Q. They didn't put it into effect anyway?

A. The rates on dressed meats and finished products between the Missouri River and Chicago have been reduced from the points that I have suggested so that they gradually got down below or in the neighborhood of the cattle rates. They were reduced still lower by competition prior to the Great Western contract. That has been done by competition, but the Great Western contract carried it to a point where it was the minimum. It got to a point where
639 there was no opportunity to go under or below that, without carrying it—I won't say at a loss, but the roads determined that they would not make any less rate than that. Instead of adopting their usual practice of one road cutting a rate and the other cutting it lower, they finally got down to what we might term rock

bottom. They said, "This rate has got now to a point where nobody wants to go any lower."

Q. This twenty-cent rate on the product was fixed entirely by competition among the carriers, competition among the railroads that carry that product, that is what fixed that and there was not any market consideration about it?

A. Competition fixed the rates as they exist at the present time on both the finished product and the live animal.

Cross-examination by Mr. COWAN:

Q. Are you familiar with the circumstances which led up to the making of the Great Western contract with the packers?

A. Well, I don't understand that question. What do you mean by "familiar with the circumstances?"

Q. Are you familiar with the circumstances which led up to the making of that contract? I will ask you more particularly if you cannot answer that in general terms? Do you know whether it is a fact that previous to that time the railroad had been engaged
640 in the business of carrying the product for the packers at a published rate apparently of not less, and I believe equal to the live stock rate, and paying to the packers a rebate which made the net revenue to the railroads as little or less than the present published rates on the dressed meat and packing house products? Do you know whether that is true or not?

A. I don't like to answer that question without advice from my attorney. I don't want to answer the question.

The COURT: What was the date of this contract, do you remember that?

The WITNESS: What is the basis of the contract?

Mr. SEVERANCE: 1902. What has your Honor in mind, the statute of limitations?

The COURT: The railroad injunction was in March, 1902, and this contract was made two or three months after that. Now, I guess it is safe enough for you to tell the truth about that.

The WITNESS: I don't hesitate to answer it so far as any of the circumstances that I may know of by hearsay since the injunction, because I have nothing to fear since the injunction.

The COURT: Well, that is all, since the injunction; you need not talk about anything before the injunction.

The WITNESS: In answering that question, I do not know
641 of my own knowledge but only by hearsay as to what led to the contract and the making of it by the Great Western road. In my opinion the Great Western road, in making that contract, were governed by hearsay in the making of that rate the same as we have all been governed in the making of rates when we want business. We ascertain, as near as possible, what the other fellow was getting, and then we meet that rate or as near that rate as would enable us to carry what we want.

Mr. COWAN:

Q. Is it not a fact, Mr. Hiland, that you were carrying for the Chicago, Milwaukee & St. Paul, dressed meat and packing house products from Omaha to Chicago at a net revenue to you not greater than 18½ cents when destined east and not greater than 20 cents when local to Chicago, previous to the making of that contract and previous to the first of January, 1902?

A. So far as my knowledge goes, I don't believe that we ever carried the dressed beef or the packing house product as low as the Chicago Great Western contract. We did it pretty near as low, I will admit, but not as low, and I would not undertake to say how near the rates were, but I don't believe we ever carried it quite as low as the present Great Western contract.

Q. You carried it somewhere below your then published
642 rate?

A. Yes, sir.

Q. Now, is it not a fact that that condition of secretely, or at all events apparently secretely carrying below the public rates, led up to the establishment of the present relation of rates?

The COURT:

Q. What is your opinion, he is asking for your opinion?

A. Yes, sir.

Mr. COWAN:

Q. Through the means of the Great Western coming in and getting a good big bite by making the contract?

A. Yes, sir.

Q. Do you believe that the present relation of the rates of less on the packing house products and dressed meats than on the live stock, is a proper and just relation of rates, if you dismiss from your equation, or from your consideration the fact that those conditions of making the published rate and the making of this contract, if that is not considered. If you dismiss that?

A. I do believe that. I do believe that the present relation of rates are as favorably adjusted—I don't want to put it exactly in that way—but I don't believe that we could bring the present adjustment of the live animal rates and the packing house product any closer together.

Q. Why?

A. Well, because to reduce the rate on live stock would be
643 to lessen the relative profit in carrying that shipment more than I think we ought to be asked to carry it for, and the rate on the packing house product is fixed so that we cannot advance it, neither can we advance the rate as now adjusted in our opinion above the present relation of rates.

Q. But supposing that you could, and that as an independent proposition, not surrounded by these peculiar conditions which happen to exist in this particular locality; supposing you were left free to make what, to the producer of live stock and the shipper of it, and the producer and shipper of the finished product, would be a just,

fair and reasonable relation of rates, commercially and otherwise, what would you fix that relation of rates at? What do you believe ought to be the relation, if you could dismiss these particular conditions which happen to surround it? In other words,——

The COURT: I guess he understands it.

The WITNESS: Yes, I understand it.

Mr. COWAN:

Q. In other words, suppose you were called upon as an independent arbiter to determine what the relation of the rates ought to be between some points where these conditions did not exist at all, what, in your judgment, ought that relation to be?

644 A. Well, I will answer that question in this way if you will permit me. If I had the making of the rate from the Missouri River to Chicago and to the Mississippi River, and it was wholly in the hands of the Chicago, Milwaukee & St. Paul railroad, in order to make an intelligent rate, I would want to figure out and see what we could earn in the handling of a train load of love stock *versus* a train load of packing house product, and the service, the relative service that was performed, and I would endeavor then to fix a rate with relation to the profits that could be derived in handling the business and not make it prohibitory in the movement or in the development of the country that we serve, in getting an increase in the live animal movement and the product of it.

Q. Now, Mr. Hiland, if you make it upon that basis, you would be making it from the standpoint of the railroad interests, would you not?

A. No, sir.

Q. Why, it would be the basis of profit and the basis of the developments of the country which you mention would lead only to additional profit.

A. Well, if you take one side of my answer, yes. I say, the development of the country, that is not entirely—I say, when you make a rate that will develop the settlement of the country, we are also serving the public and the people that are located in that

645 community.

Q. And co-extensively serving the purposes and benefits of the railroad?

A. Well, it is mutual.

Q. Mutual, yes, but it is true?

A. Yes, sir.

Q. Now, supposing you made a rate where the manufacturer can ship the finished product at a cheaper rate per hundred pounds than the live stock producer can ship the live stock, to the extent of the difference, wouldn't it enable the manufacturer of the live stock into the product, wouldn't it give to him to that extent the preference, so that he could compel the direction of the shipment where he established his packing house?

A. Yes, it would. I want to go a little further with your argument on that.

It would also establish between Chicago and the Missouri River a

great many packing houses where none exist today and where, in my opinion, it would be better for the railroads and for the public rather than assembling all of the business in these large distributing centers. It would be serving the people in a way that would produce the greatest good for the greatest number.

Q. Since the reduction was made in the public rates on the live stock product, as compared to the live stock, has there been established any considerable packing plants within the territory
646 intermediate between Chicago and the Missouri River.

A. No, there has not, but there has been some that have gone out of existence, and there are others that are existing now by main strength, in my opinion. They are languishing. The packing houses at Ottumwa, at Cedar Rapids, Des Moines and Mason City, and other points where they have managed to creep along, instead of just existing, they would have been quite respectable markets.

Q. Let me ask you, Mr. Hiland, if it is not a fact that the rate on packing house products and dressed meat from Ottumwa and Cedar Rapids is very much lower than it is on live stock from those localities to the Missouri River?

A. The same relative reduction on the products from those points has been fixed, and the basis upon which they have been fixed has been the relative adjustment that has existed before this present demoralized condition, if I may so term it, was introduced. In other words, the unit of rate has been fixed on the Missouri River, on the one hand, and the Mississippi River and Chicago, and the various destinations have been adjusted at Des Moines and Ottumwa and Cedar Rapids, and that same adjustment exists today.

It has been hard work bringing it about at times, but we have been able to accomplish it.

The COURT:

Q. If your theory is carried out, I imagine, according to
647 your view, there would be nobody hurt, unless it would be the commission men in Chicago that are selling the cattle here?

A. That is exactly it.

Q. If you will—have you made any comparisons according to your theory of what comparisons ought to be made, have you got the figures?

A. I have not.

Q. Can you get them, will you make such comparisons?

Mr. BAXTER: I have some of those comparisons to introduce by the next witness.

The COURT: Well, I would like to have him carry his theory out.

Mr. COWAN:

Q. Now, pursuing the point a little further, in order to get a direct answer to my question, is it not a fact that the same tariff reduction was made from Cedar Rapids as was made from the Missouri River to Chicago on dressed meats and packing house products?

A. Well, if I was going to answer that off-hand—I do not want to be held down to the absolute facts in the case, but I am quite sure——

Mr. DAWES: Nobody has up to the present time.

The WITNESS: I don't fix those rates myself.

Mr. COWAN:

Q. Well, assume that the same relative reductions were made?

A. I know they ought to be.

Q. Assume that they have been made.

A. Yes.

648 Q. Why has not that resulted in an increase of business from those places, if the rate of freight would increase the business established there by packers?

A. Well, I will explain that. It is, perhaps, a theory, also. The reason is that the manufacturer now of the raw material in any line of manufacture, is curtailed by the volume of business. If the manufacturer had the zone of territory that would enable him to establish these markets that I had hoped for, and the same volume that has been built up by reason of the assembling of a large number of carloads that have been brought into Chicago, the business would have increased. But the adjustment of rates has been such that the circle or zone from which the interior packer was to get his hogs was so limited that he could not avail himself of the different kinds and qualities of animals that are necessary, and that the packer at Chicago can get by reason of the diversified territory that he draws his animals from to produce his material.

The COURT: According to your idea, then, they ought to have a dressed meat lower, and a live stock rate higher, from Cedar Rapids to Chicago?

A. Well, that is true, that is the theory.

The COURT: I think so.

The WITNESS: That is the theory of it, precisely.

Mr. COWAN:

649 Q. Do you mean, Mr. Hiland, that if the rate of freight into Cedar Rapids on live stock were higher, and the dressed meat rate lower, that that would enable the manufacturer at Cedar Rapids to get his hogs?

A. No, I hardly think that is a correct inference from my reply.

Q. Well, I understood the Court's question to imply that that would be the case. Do you mean that if the rates on the live stock were adjusted so that the manufacturer at Cedar Rapids could buy or induce shipments to his point of the hogs, he would then have the opportunity the same as the manufacturer at Chicago?

A. If the markets in the interior could have been built up the same as they have in Chicago, and a rate apportioned that would enable the manufacturer in the interior to increase his production, he would then necessarily decrease the expense of reducing that, and therefore would broaden his market as he broadened his ability to serve it.

Q. Isn't it a fact that the rates of freight on hogs from points in Western Iowa which take the 23½ cent rate to Chicago, that the rates of freight on hogs from those points to Cedar Rapids is very considerably less than the rates of freight to Chicago?

A. No, I should not say that they were, not for the same distance.

650 Q. Well, count out the question of distance.

Mr. SEVERANCE: What is the question, if the rates are not lower to Cedar Rapids?

Mr. COWAN: The rates to Cedar Rapids from points in Iowa which pay 23½ cents to Chicago.

Mr. SEVERANCE: Of course they are, it is nearer to them.

A. I will answer that in this way, that the rates are less, but you take the rates on the live animal in and the product out, *versus* the product rate and the rate on the live animal to Chicago manufactured, the rate is higher in that combination.

Mr. COWAN:

Q. Are you certain of that?

A. How am I certain of it?

Q. Are you certain of it?

A. Well, I am certain of that with the exception of very near by points.

Q. Take points 100 or 150 miles from Cedar Rapids, I want to ask you first if it is not a fact that the great volume of hogs are shipped from that district are shipped to Chicago, are they not?

A. Oh, certainly. They have not the opportunity to manufacture hogs at Cedar Rapids, their capacity is limited.

Q. Your theory is that the capacity would increase if they did have a rate of freight that would make it desirable to do so?

A. Yes, that is true.

651 Q. Do you happen to know now in your mind the rate now, what the rate on hogs is from Cedar Rapids to Chicago?

A. Well, I would venture the opinion that the rate is 13½ cents.

Q. Do you know what the Iowa distance tariff is for a hundred miles to Cedar Rapids?

A. I do not.

Q. Now, if you take a carload of hogs and estimate the rate on that carload of hogs to Cedar Rapids from points a hundred miles away, and add to it the rate of freight on an equal amount of dressed meat and the dressed product of hogs or finished product, is it not a fact that the rate is less to Chicago from the original point of shipment than it would be if the hog shipper shipped right from the original point to Chicago?

A. No, sir, it would be higher.

Q. Do you know what per cent. the hogs dress out? What per cent. of the hog goes into the dressed meat product?

A. That is a matter I am not familiar with.

Q. If it is 12 cents per hundred pounds into Cedar Rapids, and is 13½ cents out, to Chicago, is it not a fact that a carload of hogs, if

the product dresses out 82 per cent.—the total rate of freight will be less to Cedar Rapids dressed out, and then shipped on than it will if the same hogs are shipped alive from the starting point to Chicago?

652 A. I would say that the rate per hundred pounds into Cedar Rapids and the rate per hundred pounds out of Cedar Rapids, the combination of the two is greater. When it comes to the shrinkage and other matters in connection with it, I don't know, but I say that the rate per hundred pounds on a carload of hogs into Cedar Rapids, and the rate per hundred pounds on the finished product out, the combination is higher.

Q. Whatever the rates of freight are, and whatever that would be, and whatever the hogs would dress out, would be a matter of figuring as to whether it would be cheaper so far as the other rate is concerned, to ship into Cedar Rapids and ship the product out than to ship the live hogs into Chicago, that would be simply a matter of figuring?

A. Yes, but that is getting into railroading and slaughtering at the same time.

Q. But, if the manufacturer can buy the hogs at a price that will enable him to lay them down cheaper for the product than the product could be dressed in Chicago, that would give a preference to the manufacturer there?

A. Yes, but I am answering all these questions on the theory that there is a complaint as to the reasonableness of the rate and that the shippers are complaining. We have not had any.

Q. Did you ever have any complaint from shippers on any freight rate?

A. Oh, yes, we have.

653 Q. Didn't you testify before the Committee on Interstate Commerce in the Senate; you appeared before it, did you not?

A. I did.

Q. Didn't you there testify that you had had no complaints?

A. No, sir; my testimony was that substantially we had no complaints. We do have complaints every day of our lives that we usually adjust between ourselves and our patrons. It would be a very easy berth for a traffic man if he had no complaints. We do have complaints every day but there is nothing serious in the complaints.

Q. As to the amount of the rate?

A. As to the amount of the rate and the reasonableness of the rate or the adjustment of the rate in any way, but no serious complaints.

Q. I read your statement and had that understanding. I am not asking the question to try to trap you.

A. That is then simply a difference of recollection between you and I, Judge.

Q. Now, Mr. Hiland, getting back to my question as to what the relation of the rates ought to be, you said that if you would be permitted to answer in this way that you would answer that if the St. Paul road were left alone to make the rates, you would just figure the profit in the business and then the development of the country?

A. Yes, sir.

654 Q. If you were called upon to fix the rates independently of the St. Paul road, whether the relation of the rates ought to be that the manufactured product pays a higher rate than the raw material in cases like this, what do you say?

A. My answer to that would be substantially what I have already said. If I was selected to make a rate I would elect to make that rate so as to serve, as I said, the greatest good to the greatest number, and the general welfare instead of the individual welfare.

Q. Well, would that be to make it lower on the manufactured product in this case than on the live stock?

A. In view of the present conditions that have been developed by reason of the Great Western contract, I should say yes.

Q. But my question originally was, independent of that? What would your answer be?

A. Well, my answer would be to that that I don't know. I don't know what I would do on a question of that kind.

The COURT: You would figure out, first, wouldn't you, what it cost on each kind of traffic? That would be your basis?

The WITNESS: Yes, sir.

Mr. SEVERANCE: I think that is what Mr. Highland said before.

655 Mr. COWAN:

Q. Are rates made on different products with a view that each shall produce the same profit for the transportation?

A. Profits of transportation?

Q. Yes, to the railroad?

A. Well, we most assuredly make our rates with the idea in view of making something out of the transaction.

Q. Are they made with a view of making the same percentage of profit in each transaction?

A. No.

Q. It is not possible to do that, is it?

A. No, I don't think so.

Q. It never has been done, has it, that you know of?

A. No, sir.

Q. Take the class rates, for example, they are pretty well adjusted for the main transportation districts in the country from New York to Chicago and from Chicago and Missouri River crossings and to the Pacific coast? Is it not a fact that there is no attention paid to the profits in the transaction as between the first-class and second-class and the second-class and third-class, and the third-class and the fourth-class, and so on?

A. I hardly know how to answer that question in order to convey, perhaps, the information you desire, except in this way; that the present theory of making rates is to give to the producer the lowest possible rate that can be obtained with a reasonable profit,

656 and then when furnished with the various articles where the rate of freight is so small that you cannot figure it, and the railroads in such cases get as high a rate as they can.

Q. The business is done for the purpose, is it not, from the stand-

point of producing the greatest revenue under the circumstances and yet retain the business and not cripple the future business of the road in the country where it is doing business?

A. Yes, sir.

Q. Mr. Hiland, there is no relation between coal and lumber so that one rate may be governed by what the other is, is there, except that each is expected to produce some profit?

A. No, I should say not, and the rates on coal and lumber vary in different localities and the relation of the rates also.

Q. In some places the lumber rate would be much cheaper per ton per mile than the coal rate?

A. Yes, sir.

Q. Without going into detail, is not that the case in respect to practically all the rates, when you get into the commodity tariffs?

A. Yes, sir.

Q. In fixing classifications in the various territory in which the classification governs the rates, I will ask you if it is not a fact that live stock is always classified, when it is classified at all, lower than the dressed meat product of live stock? I don't say live

657 stock product but the dressed meat product?

A. The question of classification of live stock is not considered at all in the classification of freight. The question of live stock——

Q. How is it in the Central Traffic Association territory?

A. There is no classification in existence that classifies live stock. That is handled in every community as a commodity rate.

Q. Have you the Central Traffic Association's schedule of rates?

A. There is one in the office, yes sir.

Q. Will you kindly send us one and identify it so that we can look at that? I have been informed that it classifies live stock in the fifth-class?

A. Well, if they classify it as fifth class, it is because of an innovation, making fifth-class rate cover various articles that were originally established on the commodity basis. The classification of freight as understood among traffic men, is the less than carload freight as distributed, or which is distributed in the so-called fourth and fifth-class freight. The other classes are innovations that have been made from time to time as the business has developed and new commodities have been introduced into the transaction.

Q. Isn't it a fact that dressed meats and packing house products is classified in the Central Traffic Association territory, the

658 fresh meat as third-class, and packing house products and dressed meat in the fifth class in both carloads and less than carloads?

A. Well, it may be, but you started out on the live stock question.

Q. Yes, that was the first. Of course the live stock, if it is classified, would be classified for carloads, because it is practically not shipped otherwise except occasional shipments. It is the classification—does the classification represent the judgment as to the relative rates that ought to apply, considering the circumstances in the territory to which the classification applies, do they not?

A. Yes, sir.

Q. With the exception of the territory between the Missouri River and Chicago and between the Missouri River and St. Paul, do you know of any locality where the live stock rates, whether commodity or class rate, are higher than the packing house product and dressed meat rates, whether class or commodity?

A. I don't know anything about it because I am not familiar with every classification, or the rates in the territory beyond the territory in which I am particularly interested in the making of rates.

Q. You do know that it is a fact, do you not, that between Chicago and New York where there is a large volume of packing
659 house products and dressed meat, a considerable volume of live stock, that the packing house product rate is about 30 cents per hundred, dressed meat, 45, live cattle, 38, and hogs 30 or 35, you know that?

A. About those rates, yes, sir.

Q. That same relation practically applies also to intermediate points like Pittsburg and Buffalo?

A. Yes, sir.

Q. Now, in the shipments which are carried out to southern territory, or shipped south of the Ohio River, do you not know, in a general way, that it is a fact that the rates of freight on live stock and dressed meat and packing house products is greater than the rates from that territory to Chicago on live stock or on live stock going that way, if any went?

A. No, I cannot say that I do. When you mention the eastern territory naturally our relations with the trend of traffic is in the direction of east and west. When you come to north and south traffic I have very little if any knowledge in regard to it.

Q. Between St. Paul and Chicago it appears that the rate of freight on live hogs is 27 cents and on the hog product or the dressed meat, I believe it is 17 and a fraction, but whatever it is there is something like that difference, about ten cents per hundred?

A. Yes, sir.

660 Q. And almost ten cents per hundred difference in the live cattle and the dressed meat of live cattle. That relation of rates did not exist prior to this adjustment of the published rates brought about by the Great Western contract, did it?

A. I don't know as to that. The rates from the northern and northwestern part of the country, however, are governed entirely by the circumstances, which are entirely different circumstances than the rates from the southwest.

We have Lake Superior only 156 miles from St. Paul on the one hand, and we have the Canada competition of the "Soo" on the other, so that they are enabled to market the products of live animals in the same territory, and in the same consuming markets that the products of the southwest are marketed in and therefore the rates on the finished product must be made with reference to placing that finished product in competition with the southwestern products at the consuming markets.

Q. If the rate from Missouri river on the finished product had

not been reduced, it would not therefore have been necessary to have reduced the rate from St. Paul in order to meet that competition?

A. I would not want to admit that because we still have the other conditions that I refer to. They might or might not. It is only aggrivated to an extent by reason of having competition on
661 both sides of us.

Q. Do you believe that the fact that a railroad thinks that it must make a lower rate in order to carry the traffic from St. Paul, in order to meet that competition, justifies a 10 cents per hundred pounds on live stock more than is charged on packing house products and dressed meat?

A. I do, because the competition in live stock does not exist, and it does on the finished product.

Q. At what point in the east does that product come in competition?

A. All of the eastern markets, New York, Philadelphia, Boston and for exports from Montreal particularly.

Q. Take the rate of freight on live stock from the Missouri River to Chicago, and add to that the rate from Chicago to New York, and then take the rate of freight on the packing house product from the Missouri River to Chicago, and add to that the rate of freight *and* the packing house product to New York. Does not the total show that the rate of freight on the live animal is considerably less than on the packing house product or dressed meats?

A. Yes, but that brings back the same old question that we are going to build up Chicago at the expense of every other possible market in the country. We don't want to adjust our rates on that basis.

662 Q. You do?

A. We don't want to, we have to.

Q. Why, then make the rate of freight on dressed meat and packing house products 15½ cents to Chicago from St. Paul when the live stock rate is 25 and 27?

Mr. SEVERANCE: The testimony shows there is no live stock carried on that rate.

Mr. COWAN: If there isn't, then the building up or not building up don't cut any figure?

A. Well, I can answer that question, I think. It is necessary to have a rate in order to adjust your rates that are not affected by the competition at intermediate points and the rate of 27 cents, which is the governing rate and the adjustment of rates from intermediate points is not unreasonable for the service performed. Now, the rates that are fixed and make it absolutely necessary to adjust the rates from the other direction are fixed by the short line as I mentioned, in fixing the rate to St. Louis and in that way work back to a point where it meets the competition from the other direction so that we are enabled, and it may be possible it may appear or appeal to the ordinary layman in making the rates that if our rates from the Missouri River are 23½ cents that that should be the reasonable and fair rate for the rates from the Northwestern District. That is not so at all. The reason for making the rates in the Southwestern

District, as I have explained, is by competition, and if we were
663 going to fix rates and adjust them all over the country, we would fix it with reference to the actual service performed and the distance we haul it, and the relative cost and so forth. Now, we are not able to confine ourselves to either one condition or the other. We have to take the various conditions that enter into the making of rates and that produces this competition.

Q. Well, doesn't it come to this Mr. Hiland, that wherever the conditions are such that you can adjust it with a view to producing a certain profit on each, you claim that makes it reasonable, and wherever there isn't any competition, you claim you can charge whatever you please and yet be reasonable?

A. We don't charge whatever we can. If we did we would determine what the man pays for his stuff and what he gets for it, and take the difference. We don't do that.

Q. You wouldn't get the traffic if you did that, that wouldn't move the traffic?

A. I have known traffic to move on that basis, that is in the old days of railroading. It is not the modern way.

Q. Have you ever known a time when the live stock rate was higher than 27 cents from St. Paul and vicinity to Chicago on hogs, that is what it is now. You spoke of the old days, can you name a time that it was ever higher than that?

A. Well, I should say, yes.

664 Q. About how long ago?

A. And on the theory that it is not so very long ago when we used to get 80 cents a barrel for hauling flour from Minneapolis to Chicago. We get 15 for hauling it now. On that theory I don't hesitate to say that the rates on live stock were also relatively, that they were higher than the present rates, a good deal higher.

Q. Well that has been a good many years ago hasn't it?

A. Oh, it is not so long ago.

Q. Whatever it is, the tariff will show.

A. Twenty-five or thirty years ago.

Q. Is it not a principle in rate making that has been generally applied, with numerous exceptions no doubt, that the rates on the manufactured products are made higher than the rates on the raw material?

A. I cannot admit that, no sir.

Q. Is it not true that if that were not a fact the manufacturer and the railroad combined could direct in all cases the point of manufacturing development?

A. I didn't catch that.

Q. I said, if it were not true that you made a lower rate upon the raw material than the manufactured product, could bot- the railroad and the manufacturer in all cases direct the point to which the producer of the raw material must ship?

A. Well, I would not want to admit that because there are
665 natural conditions affecting the manufacturing and the transportation that no rate adjustment of that kind could govern. You have got to be governed by natural conditions.

Q. Do you know whether or not the manufacturers of the finished product of live stock on the Missouri River compete with the manufacturers of the finished product at Chicago?

A. Why, yes. He competes with every place where there are animals manufactured for marketing. The Cedar Rapids man competes with the Chicago man in London and Liverpool, and if there was a packing house in Wichita, he would compete in the same way for the delivery of his goods in London or Liverpool.

Q. Are there not the same manufacturers at the Missouri River as at Chicago, the *same* persons?

A. There are *some* the same and *some* that are not.

Q. What ones are not?

A. Well, I think the Ruddy Brothers have no packing plant in Chicago.

Q. Well, that is a very small concern is it not, comparatively?

A. Well, they are small now, they may be larger. I understand they have ambitious hopes.

Q. How long have refrigerator cars been in use in the shipment of dressed meat and packing house products?

A. Oh, to be *safe*, I should say twenty years.

666 Q. Is it not a fact that *after the refrigerator car came into use*, common use in the shipment of dressed meat and packing house products that a new adjustment of the relative rates between Chicago and New York and other Atlantic seaboard points the trunk lines extending from New York to Chicago submitted to arbitration the question as to the relative adjustment of those rates about ten or twelve years ago, and they were then established by arbitration and have since remained on the same basis they are to-day?

A. Yes *sir*.

Mr. SEVERANCE: I preserve the same objection to that question as I did before, it is immaterial and has nothing to do with this territory.

The COURT: Well he, has answered.

Mr. SEVERANCE: I preserve my exception.

Mr. COWAN:

Q. Hiland, to what source did you resort in obtaining the schedule of rates which you have filed as exhibits to your testimony?

A. They were obtained through our general freight office.

Q. That is the regular printed schedules in common use?

A. Yes *sir*.

Q. You said that live stock did not pay its just contribution to the rates that were paid to the expense, I presume you mean?

A. Yes.

667 Q. What is a just contribution for freight to pay, what per cent.?

A. Well, I can't answer that question.

Q. How is that?

A. I cannot be *specific* in answering that question.

Q. There is no established principle upon which that is done?

A. No, that is more of an opinion than it is a statement of fact.

Q. Is it not a fact that the tendency when rates are reduced is to stimulate the traffic in the particular line, as a rule?

A. Sometimes it is true and sometimes it is not.

Q. I had another question I intended to ask you about those freight rates. Could you furnish us and compile, or rather present public schedules of the Central Traffic Association territory?

A. I would rather you would get that from the lines who serve the Central Traffic. I could get it but then I would rather you would get it from some other source.

Q. I thought maybe you had it convenient. To save asking you some questions in regard to particular expenses and the various matters pertaining to the operation of your road, I will ask you if that is the annual report of the Milwaukee & St. Paul Railway (showing witness a document)?

A. That is our road, but as to operation I have nothing to do with the Operating Department of the railroad, and if you
668 would permit me to suggest that you confine the question to the Operating Manager as you would get more correct replies.

Q. The point I wanted to know——

A. I will answer anything I can.

Q. What I wanted to know was regar-ing the annual report of the Chicago, Milwaukee & St. Paul Railway, whether it correctly states whatever it does state with reference to the matters therein contained?

A. That is to the best of my knowledge and belief, yes.

Examination by Mr. RANSOM:

Q. Mr. Hiland, do you make rates from Western Iowa into South Omaha?

A. Yes sir.

Q. With your road across the Union Pacific bridge?

A. Yes sir.

Q. And you have an arrangement with the Union Pacific by which you lease its tracks or right of way over its tracks from Council Bluffs to South Omaha?

A. Yes sir.

Q. And is that true of the Rock-Island road too, you understand they have a running arrangement?

A. I think so. I understand the arrangement is a joint arrangement.

Q. That is true also of the Great Western.

669 A. I don't know whether the Great Western uses that line or the other bridge.

Q. Don't you know that the courts so far up as the United States Court of Appeals has decided that the Union Pacific bridge is open to all the lines centering in Council Bluffs?

A. I know that by reading the newspapers.

Q. Of course that is not very good evidence, but that is an open bridge under certain contracts between the Union Pacific and lines centering in Council Bluffs?

A. Yes sir.

Q. So that you make your rates right to South Omaha?

A. Yes sir.

Q. And you do not have any extra toll for the bridge, you don't put in $4 *in* for bridge toll, do you?

A. I don't think we do, I don't believe we do.

Q. You don't think you put any $4 arbitrary bridge toll in for making rates from those points over into Council Bluffs from South Omaha?

A. No.

Mr. COWAN:

Q. Is it not a fact your rates that apply to Omaha are dependent on the Iowa Distance Tariff, and rates fixed by the Iowa Commission to Council Bluffs?

Mr. RANSOM: I object to that, it doesn't make any difference on this Interstate rate.

The COURT: The objection is sustained.

670 R. M. CALKINS, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your name?

A. R. M. Calkins.

Q. What is your occupation?

A. Assistant General Freight Agent of the Chicago, Milwaukee & St. Paul Railway, in charge of live stock and packing house products.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. For about ten years.

Q. With what railroads have you been connected, and in what capacities?

A. I have been with the Milwaukee & St. Paul, twenty-five years, ten years ago I was in the station service.

Q. Since that time you have been in the Freight Department?

A. Yes sir.

Q. Have your duties related to the making of freight rates in any part of this territory?

A. They do, yes sir.

Q. How does the amount paid by your company for loss and damage to cattle and hogs and for injuries to persons in charge of cattle and hogs compare with the amount paid by your com-

671 pany for similar claims in regard to perishable commodities?

A. I don't believe that we have any specific figures that would allow me to give a direct answer, but from my observation from handling the business, I should say that the claims that we pay on live stock would exceed by 70 or 80 per cent. the total amount that we paid on all other perishable property handled.

Q. What is the established minimum car load rate for cattle and hogs on your road respectively and how does the actual loading of cattle and hogs on your line compare with that minimum?

A. The minimum weights as carried are as follows: A 31 foot car and under, in length, inside measurement, cattle, 19,000 pounds, hogs, 15,000 pounds; cars over 31 feet to, but not in excess of 33

feet in length, inside measurement, 20,500 pounds for cattle, hogs, 16,000 pounds; cars 33 feet and over in length, cattle 22,000, hogs, 17,000 pounds; 40 foot inside measurement, cattle, 24,000 pounds, hogs, 19,000 pounds; cars over 40 feet inside measurement, cattle 26,000 pounds. I should say that the average loading of cattle would exceed the minimums about 500 pounds to the car. I don't think that hogs will any more than average the minimums as I have stated.

672 Q. Will you please file as Exhibit No. 3 to your testimony a statement showing a comparison per car mile charged by your road on cattle and hogs in carloads, and the revenue per car mile realized by your Road on wheat, tropical fruits, and classified freight in carloads for the same distances selecting for said comparison some fairly representative portion of your Road over which said kinds of traffic actually move?

A. I will.

Q. Have you prepared such an exhibit?

A. I have.

(The witness here produced a statement which was marked "Calkins' Exhibit 3" and filed with the court as part of his testimony).

672a EXHIBIT No. 3.

Freight Earnings per Car per Mile on Commodities Shown Below, Transported Between Chicago, Ills., and Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, During the Month of July, 1905.

Commodities.	Weight.	Freight earnings per car per mile.
Cattle,		
At Missouri River points..... ..	22,000 pounds	$.103
Hogs,		
At Missouri River points.....	17,000 pounds	.0799
Soft Coal, Eastern,		
At Chicago, Illinois.....	50,000 pounds	.113
Coke,		
At Chicago, Illinois.....	50,000 pounds	.12
Corn,		
At Missouri River points.....	50,000 pounds	.11
Wheat,		
At Missouri River points.....	50,000 pounds	.12
Lumber, Pine,		
At Chicago, Illinois.....	40,000 pounds	.128
Agricultural implements, Harvesters,		
At Chicago, Illinois...	25,000 pounds	.15
Agricultural implements, Mowers,		
At Chicago, Illinois.....	25,000 pounds	.15
Nails,		
At Chicago, Illinois.....	40,000 pounds	.216

Calkins Exhibit No. 3.

Q. Will you file as Exhibit No. 5 to your testimony a statement showing for the last three years ending June 30, 1905, the volume of cattle and hog business, and also the relative range of prices of cattle and hogs at Chicago, Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Omaha, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul, Ottumwa, Des Moines, Marshalltown and Cedar Rapids.

Mr. COWAN: I don't think Mr. Calkins has been qualified on the price of hogs and cattle.

The COURT: If he has a schedule there, let him file it for what it is worth.

A. I was not able to secure the date in the way you put it, but I have it by years ending from 1898 to 1904. I have taken the quotations from the various stock journals that were current during that period.

Mr. BAXTER: Well, you may file it all right.

Mr. COWAN: For each year, Mr. Calkins, for *for* just two years.

675 Q. From 1898 to what inclusive?

A. 1904. Not complete as to each market, but then it is as near so as we can get it.

Mr. BAXTER: Please file a statement as Exhibit No. 6, to your testimony showing for the last three years, ending June 30, 1905, the volume of shipment of packing house products and fresh meats from St. Paul and Missouri River points to the north, west and southwest?

A. I have it.

Q. Does it separate the shipments?

A. No sir, it does not, it gives them as a total. I was unable to obtain the destination of all of them.

Q. Well, can you give me an approximate idea as to what proportion of the total shipments coming to Chicago, and what proportion goes south, north and west?

A. Well, there is a considerably greater portion of it comes east. through Chicago and St. Louis gateways, than there is going south and west. I should say fully seventy per cent.?

Q. And the remainder would be divided how?

A. It would be scattering shipments going to Texas points, Colorado points, Montana, California, and so forth.

Q. Is the existence of the Kansas City and the other Missouri River packing markets a benefit or injury to the section of country in which they are situated?

676 A. In my opinion they are of great benefit.

(The statement last produced by the witness was marked "Calkins' Exhibit 6," and filed with the court as part of his testimony.)

676a

Exhibit No. 6.

Statement Showing the Total Carload Shipments of Fresh Meats and Packing House Products from Missouri River Points During the Years 1902, 1903, *and* 1904.

Points of shipment.	Fresh meats.			Packing house products.		
	1902.	1903.	1904.	1902.	1903.	1904.
South Saint Paul, Minn....	*5,669	*6,519	*7,451			
South Omaha, Neb.	18,524	21,254	19,468	9,783	11,358	10,048
Kansas City, Mo.....	24,180	25,035	26,936	13,083	12,135	15,164
St. Joseph, Mo.	11,534	13,554	13,772	6,390	6,764	5,935
Sioux City, Iowa	*7,775	*4,501	*4,449			

* This includes Fresh Meats and Packing House Products.

Q. Why?

A. Well, they enable the shipper, grower of live stock at points intermediate thereto to make his selections as between these prices that are paid at the different centres. My observations have shown that live stock shippers watch the different markets very closely, and always patronize those that will pay the highest prices. There are certain seasons in the year that a market at a point on the Missouri River will pay considerable of a premium for a certain class of live stock over the Chicago market, and this is also true of markets or interior packing houses. Where the shipper has no yardage charge, or commission charge to pay. He sells his hog or his animal direct to the packer at that point, and in a great many cases it nets him much more money than it would if he sent it to the Chicago market and had to pay these incidental expenses which I have mentioned.

Q. What effect if any would the reduction on the cattle and hog rate at intermediate point on your Road east of the Missouri River have on the rates on cattle and hogs west of the River?

A. So far as the Milwaukee & St. Paul Road are concerned it is rather difficult to determine what the results would be in
677 territory in Kansas and Nebraska. However, my judgment would be that it would materially reduce them from quite a scope of country throughout those States. As to the territory north and west of Sioux City and Sioux Falls, or of Sioux City and South St. Paul, it would very materially affect our rates back to a considerable distance. We should have to make corresponding reductions from territory west of those points to meet the reductions that took place east of them.

Q. State whether said reduction of rates on cattle and hogs at intermediate points east of the Missouri River would have any affect upon the revenue of your Company, and if so, what?

A. Basing the calculation upon the amount of business that we handled during the year 1904, the reduction would approximate, $277,000.

Q. That would be per annum, that much per annum?
A. Yes sir.
Q. State what terminal or switching charges are paid by your company on packing house products and fresh meats at St. Paul, Minneapolis, and Missouri River points?
A. South Omaha we pay $2. per car on packing house products, one dollar on live stock. At Kansas City there is a varied price there from the different packing plants. We receive our packing house tonnage from different switching roads, and they have varied prices on movement to the following: from Swift & Company
678 $4. per car, and from other packers $3. per car. At South St. Paul we pay $2.50 per car, on packing house products, and $2.75 per car on live stock excepting on shipments of range cattle, in ten or more car lots, and on those we pay $1.25 per car, which includes the loading charge assessed by the stock yards company. At Sioux City we pay $1.50 per car on both packing house products and live stock.
Q. Will you please file a statement of Exhibit No. 7, showing the number of cars of packing house products and fresh meats received by your company during the year ending June 30, 1905, from St. Paul and each of the Missouri River points?
A. I will file it.

(The witness here produced a statement which was marked "Calkins' Exhibit 7," and filed with the court as part of his testimony.)

678a No. 34.

EXHIBIT No. 7.

Statement Showing Number of Cars of Packing House Products and Fresh Meats Shipped Via C., M. & St. P. R'y, from South St. Paul, Minn., Kansas City, Mo., South Omaha, Neb., and Sioux City, Iowa, from June 30, 1904, to June 30, 1905.

Point of shipment.	Fresh meats.	Packing house products.
South St. Paul, Minn.....	*1833	
Kansas City, Mo.....	2831	2341
South Omaha, Neb.....	1781	2637
Sioux City, Iowa.....	1213	1347

*Includes packing house products.

Calkins Ex. No. 7, vol. 5, p. 678.

[Endorsed:] Judge Baxter. Ans. to R. M. Calkins' questions.

Q. What does it cost your company per car for terminal expense to deliver cattle cars at the Union Stock Yards in Chicago?

A. On business that may be received through our Chicago and Council Bluffs gateway or through what is termed Franklin Park, it costs us $2.27½ per car in addition to the expense paid the train crews and train supplies which averages in the neighborhood of 50 cents per car, on business that may be received and handled through the Chicago and Milwaukee Division on business that would
679 pass through the St. Paul gateway, it would amount to $1.80. per car trackage; in addition to that would be added the same expense of 50 cents per car for train men's wages and supplies.

Q. There seemed to be published certain local rates from Missouri River to Chicago, and certain proportional rates. Do those proportional rates operate in favor of or against Chicago in your opinion?

A. Well, I could not say that they directly operated in favor of or against Chicago as a market. They are made necessary in order to permit the lines of the railroads which have no lines through the direct routes from Kansas City, if you please, to participate in the business through Chicago. It is a proportional rate meeting the through rate, which is fixed by the St. Louis gateway.

Q. State what amount of transportation your company has furnished drovers in charge of shipments of live stock coming from Missouri River and St. Paul, and station intermediate thereto during the years 1903 and 1904, if you have it.

Mr. SEVERANCE: Transportation to Chicago you mean?

Mr. BAXTER: To Chicago and return.

A. I have only obtained the amounts for the return part of it. It is reasonable to suppose that every man that we issued return transportation to we brought in and a great many more, because we furnished transportation with one car of live stock to Chicago with no return feature to it, so my figures include the
680 regular fares this transportation would have amounted to from Chicago, returning only to intermediate points between Chicago and Kansas City, Sioux City and St. Paul for the year 1903 $71,548.86; for the year 1904, $41,565.67.

I will say by way of explanation of the decreased amount for the year 1904 there are three months of that period that we did not issue any return transportation at all.

Mr. SEVERANCE: Was not that the year of the strike?

A. Yes sir, that had something to do with it.

Q. There was a great decrease in the receipts here, wasn't there, during the strike?

A. Yes sir, very material.

Mr. BAXTER:

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and St. Paul respectively from certain stations on the Chicago, Milwaukee & St. Paul Railway, west of St. Paul, also the straight rate from the said station to Chicago, Illinois, on cattle and hogs, and the combination of the rates on cattle and

hogs from said station to St. Paul, plus the packing house product rate of 15.7 cents from St. Paul to Chicago. If so please file such statement as Exhibit A to your testimony and state briefly what it shows.

A. Yes sir, I have.

681 (A statement was here produced which was marked "Calkins' Exhibit A," and filed with the court as part of his testimony.)

681a EXHIBIT A, R. M. CALKINS.

Statement of Rates on Live Stock.

So. St. Paul, Minn. September 19th, 1905.

From stations west of St. Paul, Minn.	Distance to		Straight rates to Chicago, Ill.		Rate to St. Paul, Minn.		Combination of the live stock rates from said stations to St. Paul, Minn., plus the packing house product rate of 15.7 cents from St. Paul to Chicago.	
	Chicago Ill.	St. Paul Minn.	Cattle	Hogs	Cattle.	Hogs	Cattle	Hogs.
Steward ..... Minn.	483	75	27	27.5	12.5	12.5	28.2	28.2
Olivia..... "	508	100	28	29	14	14	29.7	29.7
Minnesota Falls, "	533	125	30	30	15	15	30.7	30.7
Watson..... "	554	150	31	31	16	16	31.7	31.7
Correll..... "	578	175	32	32.	16.5	17	32.2	32.7
Wahpeton. .. N. D.	663	261	33.25	37	17.75	22	33.45	37.7
Fargo..... "	709	307	34.25	38.5	18.75	23.5	34.45	39.2
Aberdeen ..... S. D.	702	297	38	42.5	24	27.5	39.7	43.2
Evarts..... "	800	395	43.5	48	28	34	43.7	49.7

Calkins Ex. A, vol. 5, p. 681.

A. (Continued). The combination of the live stock into St. Paul plus the provision rate out is greater than the through rate from the point of origin*al* to Chicago?

MR. SEVERANCE: On live stock?

A. Yes sir.

MR. BAXTER:

Q. Have you caused to be correctly compiled a statement showing the distances to Chicago and St. Paul respectively from certain stations on your Road south of St. Paul, showing also the straight rates from said station to Chicago, Illinois, on cattle and hogs, and the combination of the live stock rates from said stations to St. Paul plus the packing house product rate of 15.7 cents from St. Paul

to Chicago. If so, please file such statement as Exhibit B, to your testimony, and state briefly what it shows?

A. I have and the results are the same as they are in Exhibit "A," that is, that the combination into St. Paul and out is greater than the through rates.

(The statement here produced by the witness which was marked "Calkins' Exhibit B," and filed with the Court as part of his testimony.)

681*b* EXHIBIT B, R. M. CALKINS.

Statement of Rates on Live Stock.

So. St. Paul, Minn. September 19th, 1905.

From stations south of St. Paul, Minn.	Distance to		Straight rates to Chicago, Ill.		Rate to St. Paul, Minn.		Combination of the live stock rates from said stations to St. Paul, Minn., plus the packing house product rate of 15.7 cts. from St. Paul to Chicago.	
	Chicago, Ill.	St. Paul, Minn.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Pratt.....Minn.	377	75	23	25	12	12	27.7	27.7
Austin..... "	350	100	23	25	12	12	27.7	27.7
Leroy..... "	324	125	22.5	24	12	12	27.7	27.7
Cresco.....Iowa.	300	150	22	23	14	14	29.7	29.7
Ossian ..... "	274	175	22	22.5	17	17	32.7	32.7
Beulah..... "	247	200	18.5	22	17	17	32.7	32.7

Calkins Ex. B, vol. 5, p. 681.

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Ottumwa respectively from certain stations on the Chicago, Milwaukee & St. Paul west and south-
682 west of Ottumwa, also the straight rate from said stations to Chicago, Illinois on cattle and hogs and the combination of the live stock rates from said station to Ottumwa plus the packing house product rate of 16 cents from Ottumwa to Chicago. If so, will you please file such statement as Exhibit "C" to your testimony, and state briefly what it shows?

A. I have the combination of the live stock rate into Ottumwa, and the packing house product rate out is greater than the through rate from the point of origin*al* to Chicago.

(A statement was here produced by the witness which was marked "Calkin's Exhibit C," and filed with the court as part of his testimony.")

682a EXHIBIT C. R. M. CALKINS.

Statement of Rates on Live Stock.

Ottumwa, Iowa. September 19th, 1905.

From	Distance to		Straight rates to Chicago, Ill.		Rates to Ottumwa, Iowa.		Combination of the live stock rates from said stations to Ottumwa, Ia., plus the packing house product rate of 16 cts. from Ottumwa to Chicago.	
	Chicago, Ill.	Ottumwa, Iowa.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Moravia.....Iowa.	316	25	22	22	6.71	7	22.71	23
Seymour..... "	339	50	22	23.5	8.68	8.67	24.68	24.67
Newtown..... Mo.	368	75	22	23.5	11.5	13	27.5	29
Laredo..... "	394	100	22	23 5	13 5	15	29.5	31
Dawn..... "	421	125	23	23.5	14 5	15	30.5	31
Cowgill..... "	439	150	23.5	23.5	14.5	15	30.5	31
Excelsior Springs "	465	175	23.5	23.5	14.5	15	30.5	31
Thornton..... "	488	200	23.5	23.5	14.5	15	30.5	31
Sigourney.....Iowa.	295	28	22	21	7.11	7.33	23.11	23.33
Washington..... "	246	46	20	19	8.68	8.67	24.68	24 67

Calkins Ex. C, vol. 5, p. 682.

Q. Now, in Exhibit A I failed to ask you what the distances are from those stations that are west of St. Paul to St. Paul, to what distances do they range?

A. From 75 to 395 miles.

Q. Now, with reference to "Exhibit B." What are the distances from the stations south of St. Paul to St. Paul?

A. 75 to 200 miles, taking the rates from the stations that are separated by a distance of 25 miles.

Q. Now, with reference to Exhibit "C," which you last filed, what are the distances from those stations to Ottumwa, located southwest of Ottumwa?

A. From 25 to 200 miles.

683 Q. Have you caused to be correctly compiled a statement showing the distance from Chicago and Des Moines, Iowa, respectively to certain stations on the Chicago, Milwaukee & St. Paul Railway west and north of Des Moines, also showing the straight rates from said station to Chicago, Illinois, on cattle and hogs and the combination of live stock rates from said station to Des Moines plus the packing house product rates of 18½ from Des Moines to Chicago?

A. I have.

(The witness here produced a statement which was marked "Calkins' Exhibit D," and filed with the court as part of his testimony).

683a EXHIBIT D, R. M. CALKINS.

Statement of Rates on Live Stock.

Des Moines, Iowa. September 19th, 1905.

From—	Distance to—		Straight rates to Chicago, Ill.		Rates to Des Moines, Iowa.		Combination of the live stock rates from said stations to Des Moines, Ia., plus the packing house product rate of 18.5 cts. from Des Moines to Chicago.	
	Chicago, Ill.	Des Moines, Iowa.	Cattle.	Hogs.	Cattle	Hogs.	Cattle.	Hogs.
High Bridge...Iowa.	353	25	22	23.5	6.71	7	25.21	25.5
Yale..... "	383	50	23.5	23.5	8.68	8.67	27.18	27.17
Farlin..... "	397	75	23.5	23.5	10	16.16	28.5	34.66
Rockwell City. "	421	100	23.5	23.5	11.32	10.96	29.82	29.46
Albert City.... "	453	125	23.5	23.5	12.58	12	31.08	30.5
Gillett Grove.. "	467	150	23.5	23.5	13.21	12.6	31.71	31.1
Hartley..... "	470	175	24	23.5	14.47	13.8	32.97	32.3
Boyden..... "	499	200	24.5	24.5	16	15.22	34.5	33.72

Calkins Ex. D, vol. 5, p. 683.

Q. State what that is?

A. The distances range from 25 to 200 miles. The combination on Des Moines using a live stock rate in and the provision rate out is greater than the through rate.

Q. Greater than the straight rate?

A. Greater than the straight rate from the same point to Chicago.

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Cedar Rapids, respectively from certain stations on the Chicago, Milwaukee & St. Paul Railway west of Cedar Rapids, also the straight rates from the said rates to Chicago, Illinois, on cattle and hogs and the combination of the live stock rates, plus the packing house product rate of 13½ cents
684 from Cedar Rapids to Chicago. If so, please file said statement as Exhibit E to your testimony, and state briefly what it shows?

(The statement was here produced by the witness which was marked "Calkins' Exhibit E," and filed with the Court as part of his testimony.)

684a EXHIBIT E, R. M. CALKINS.

Statement of Rates on Live Stock.

Cedar Rapids, Iowa. September 19th, 1905.

From—	Distance to—		Straight rates to Chicago, Ill.		Rates to Cedar Rapids, Iowa.		Combination of the live stock rates from said stations to Cedar Rapids, Ia., plus the packing house product rate of 13.5 cts. from Cedar Rapids to Chicago.	
	Chicago, Ill.	Cedar Rapids, Iowa.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Vinining.....Iowa.	270	50	22	21	8.68	8.67	22.18	22.17
Ferguson..... "	297	75	22	21	10	10.16	23.5	23.66
Collins..... "	321	100	22	22.5	11.32	10.96	24.82	24.46
Woodward ... "	355	125	23	23.5	12.58	12	26.08	25.5
Herndon..... "	378	150	23.5	23.5	13.42	12.8	26.92	26.3
Dedham..... "	403	175	23.5	23.5	14.47	13.8	27.97	27.3
Manilla..... "	427	200	23.5	23.5	15.53	14.8	29.03	28.3
Paralta..... "	219	14	20	18	5.92	6.33	19.42	19.83
Oxford Jct.... "	193	41	17	18	8.29	8.33	21.79	21.83
Monticello..... "	216	38	19	18	7.89	8	21.39	21.5
Greeley..... "	244	66	21	18	9.74	10	23.24	23.5

Calkins Ex. E, vol. 5, p. 684.

A. I have. The distances range from 14 to 200 miles, and show that the combination of the live stock rate into Cedar Rapids plus the 13½ provision rate out is greater than the through rate on live stock from the same stations to Chicago, Illinois.

Q. Have you caused to be correctly compiled a statement showing the distances from Chicago and Sioux City respectively to certain stations on the Chicago, Milwaukee & St. Paul Railroad north and west of Sioux City, and the straight rates from the said stations to Chicago, Illinois, on cattle and hogs and the combination of the live stock rates from said stations to Sioux City, plus the packing house product rate of 20 cents from Sioux City to Chicago, if so, please file said statement as Exhibit F. to your testimony and state briefly what it shows.

(A statement was here produced which was marked "Calkins' Exhibit F," and filed with the court as part of his testimony.)

6845 EXHIBIT F, R. M. CALKINS.

Statement of Rates on Live Stock.

Sioux City, Iowa. September 19th, 1905.

From—	Distance to—		Straight rates to Chicago, Ill.		Rates to Sioux City, Iowa.		Combination of the live stock rates from said stations to Sioux City, Iowa, plus the packing house product rate of 20 cts. from Sioux City to Chicago.	
	Chicago, Ill.	Sioux City, Iowa.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Burbank.....S. D.	547	25	26	25	9	10	29	28
Gayville..... "	567	50	26	30	11	13	31	33
Lesterville..... "	595	75	30	34	14	16	34	36
Tripp..... "	612	100	31	34	16	19	36	39
Ethan..... "	625	125	32	34	17	20 25	37	40 45
Letcher..... "	628	150	33	38	19	23 9	39	43 9
Alpena..... "	651	175	34.5	40	20	25	40	45
Bonilla..... "	680	200	35.5	41	22	26.7	42	46.7
Aberdeen..... "	702	266	38	42.5	25	29	45	49
Edgeley.....N. D.	708	339	39.5	42.5	29	31.5	49	51.5
Hornick.....Iowa.	692	25	23.5	23.5	7.11	7.33	27.11	27.33
Mapleton..... "	669	40	23.5	23.5	8.66	8.45	28.66	28.45
Manilla..... "	627	90	23.5	23.5	10.79	10.04	30.79	30.04

Calkins Ex. F, vol. 5, p. 694.

685 A. I have, comprising the distances from 25 to 339 miles, which shows that the combination of the live stock rate into Sioux City plus the provision rate of 20 cents out is greater than the through rate on live stock through the same points to Chicago.

Q. State whether or not there are any stations on your road other than those mentioned in your Exhibit "A to F inclusive," which have a rate adjustment in favor of Chicago as against other packing houses, and points referred to. If so describe those stations generally.

A. Did you say as against other markets in your question?

Q. In which the adjustment applies in favor of Chicago as against those packing house markets that I have referred to?

The COURT: What he asks is, whether there are any other similar points to the ones you have given?

A. Well, I had in mind Austin, Minnesota, Mason City, Iowa, both have packing plants, I think the results would be the same, if not in the case of Austin, Minnesota, more market than any we have shown.

Mr. Barnes:

Q. Now, for instance take Exhibit "A." You give Steward, Olivia, Minnesota Falls, Watson, Cornell, Wahpeton, Fargo, Aberdeen, and Evarts, they are in a distance of 75 to 305 miles. Are there any other stations in between those stations?

A. A great many, yes sir.

Q. Would the same principle apply to all the other stations
496 as between those you have enumerated?

A. It would.

Q. That is all.

Mr. Sweeney: It is a fact that in all cases where you go beyond St. Paul a distance of say 200 miles the local rate into St. Paul far exceeds the proportional rate from St. Paul to Chicago?

A. I think that would be true a distance of 200 miles.

Q. And the distance from St. Paul to Chicago is 400?

A. Yes sir.

Q. So that you get more money for hauling the product in the same cars over half the distance west of St. Paul into the St. Paul Union Stock Yards than you get for hauling it from there on to Chicago?

A. Yes sir.

Q. Now, this local rate on cattle and hogs from South St. Paul, or from St. Paul is merely a hauling rate, isn't it?

A. The local rate?

Q. Yes, the published rate is a hauling rate for the territory contiguous to St. Paul, below?

A. Usually points around St. Paul would take the same rate.

Q. What I mean by that is this, to practice there is no live stock moved to Chicago on that local rate, is there, it is all moved on the proportional rate?

A. Well, I have no knowledge of any being moved from South St. Paul on that basis.

497 Q. Well, you have no knowledge of any live stock being moved from South St. Paul on any other basis than the proportional rate?

A. No, sir, there isn't any originate there, except that which may come from points beyond.

Q. And consequently by reducing billing, they in all cases get the proportional rate to Chicago?

A. I believe that is true.

Q. And that rate in case of shipments from rather remote points on the northern line is sometimes as low as 11 cents, is it not?

A. I think the division would not allow the line south of St. Paul to exceed that in a great many instances.

Q. Austin, Minnesota that you spoke of on your road and also the Chicago Great Western, is it not?

A. Yes sir.

Q. And I believe that you stated that you labored under the disadvantage you have mentioned as to those other interior packing house points to a greater degree than the others?

A. I think the comparison would show more difference in the combination on Austin than it does on these other points. I did not prepare any figures on that at all.

Q. Well, wouldn't it be your judgment that if a change was made, such as was asked in this case, doing away with the three and a half cents difference between the cattle rate and the packing house rate, it would result in closing that packing industry at Austin, Minnesota?

688 A. The difference would be greater than three and a half cents in almost every instance at Austin, and if the provision rate was the maximum on live stock from the territory surrounding Austin, I should say that it would drive them out of business absolutely. They could not exist.

Q. And would you say that would be the result if such an iniquitious decision should be made as to Mason City?

A. I think it would.

Mr. SEVERANCE: That is a joke, Your Honor.

Q. Well, what would be the effect at Cedar Rapids, and these other interior points?

A. They would be put to just that much disadvantage and in addition to the rates, they have the Chicago competition, the lack of being in a position to select the class of live stock that they want, the same as the Chicago packer has, for that reason they have a very hard time of it to exist under the present rates.

Q. And if this additional burden were put on them, in your opinion they could not exist?

A. No.

The COURT: How long have they been running there?

A. Well, the Austin plant has been in operation, I should say, about four years.

Q. They were running before this rate was made as it is at present, weren't they?

A. In a very limited way.

Mr. SEVERANCE: Merely supplying local territory?

689 A. Yes sir.

Q. They were really running nothing in those days, your Honor, but what is commonly called a slaughter house, supplying territory right around there.

A. A very small affair.

The COURT: Who made this contract with the Great Western Railroad, was it the small houses, or the great packers, who maintain business in Chicago?

A. I have nothing but hearsay to go by, but my understanding is it was made by the large packers on the Missouri River.

The COURT: There wasn't much said then about the small packer?

A. No sir, I don't think so.

An adjournment was here taken until the following day, Friday, September 22, 1905, at ten o'clock A. M.

690 SEPTEMBER 22, 1905.—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon R. M. CALKINS, resumed the stand for further examination by Mr. Severance.

Q. Mr. Calkins, will you state a little more definitely to the court exactly your functions in connection with the Chicago Milwaukee & St. Paul Railway Company?

A. Well, my duties are assigned by having charge of certain commodities over the entire system. Among those that are assigned to me are the live stock and packing house products, fresh meat and lumber and one or two other minor commodities.

Q. How much of your time is devoted to the transportation and making of rates for fresh meats, packing house products and live stock, and looking after the tariff?

A. Well, it takes up more than half my time, considerably more.

Q. During what period does that cover?

A. The entire year.

Q. I mean for how many years?

A. Well, the last five years.

691 Q. In connection with that business how much are you brought in contact with producers of live stock in the West and in Iowa? I mean producers and shippers, by producers I mean shippers of live stock.

A. Well, I meet a large number of them every day, from not only our own immediate territory, but from Montana, Texas, Colorado and the western territory, a great many. I have quite an extensive acquaintance among them.

Q. Is it any part of your business to solicit that traffic,

A. Well, not especially so, still I never lose the opportunity to look after that part of the business if I can. We have men on the road that attend to those details.

Q. And they are under you, are they not?

A. Yes sir.

Q. Now, Mr. Calkins, having been brought in contact with these shippers to the extent that you have stated, will you tell the court what complaints, if any, you have received from these shippers as to the present rates that are charged by your road for the shipment of live stock or as to the comparative rate as between the product and the live animal?

A. You refer to the territory which——

Q. The territory in question here, yes.

A. Well, I don't recall having received a complaint from a live stock shipper of that character.

692 Q. Have you received complaint*a* from any persons at any time with reference to rates on either the product or the live stock during the five years you have mentioned?

A. Yes, I have.

Q. From whom?

A. Well, the packers at those interior points, Cedar Rapids and Des Moines.

Q. Now, Mr. Calkins, you were asked yesterday by Mr. Cowan something with reference to the shrinkage, or there was a suggestion in one of his questions as to the shrinkage in the weight of live stock when slaughtered at these interior points. Do you know what the shrinkage in the animal itself is when it is slaughtered?

A. Well, I believe the packer——

Q. I am asking about the animal itself now.

A. Do you refer to cattle or hogs?

Q. Well, take them separately?

A. The average figured by the packer, I believe, is about sixty per cent. on the—That is, they will get from a bullock sixty per cent. of dressed beef; in addition to that there is the hide and the offals. The hog, I don't know about, I could not answer that.

Q. Adding to the sixty per cent., the weight of the hide and the offal, what is the net shrinkage?

A. I don't think it would exceed 15 or 20 per cent.

693 Q. Now, Mr. Calkins, the hog will dress a higher — cent. than the cattle, will it not?

A. I believe it will, yes sir.

Q. Now in addition to the weight of the product upon which these interior packers have to pay freight, do they not also have to pay freight at the same time upon the boxes or barrels, or whatever may be used, in which the product is shipped out?

A. Yes sir, the rate is based on the gross weight of the package.

Q. Do they not also have to pay the railroad Company's tariff rates on these casings, whatever they may be, boxes, barrels etc., when shipped into the towns in which their packing houses are located?

A. They usually go in in the form of lumber or box shooks, as they are called, at the regular tariff rate.

Q. Now, adding to the weight of the product on which these interior packers pay freight, the weight of the boxes and barrels, the casings of whatever sort they may be, in which the product is shipped out, and adding to that the freight upon the materials of which these packages are composed, which weighs the most, the live stock or the product with these additions?

A. I think the product in addition to the supplies in—in fact I know it would exceed the weight of the live stock that they might receive.

694 Q. Now it appears that there is a certain territory east of the Missouri river which takes the 23½ cent rate into Chicago. That distance is how far east of the river on your roas?

A. Well, in round numbers, 145 miles before we begin to grade.

Q. Now, will you tell the court whether more or less live stock, cattle and hogs, are shipped to Chicago from that point at the present time than are shipped to Omaha and Sioux City combined?

A. There is more comes to Chicago, considerably more.

Q. Do any of those cattle from that territory go to any western packing house other than Sioux City and South Omaha?

A. Maybe a few go to Des Moines, but it is a very small amount.

Q. Well, add in those that go to Des Moines together with the cattle and hogs shipped to South Omaha and Sioux City, isn't it a fact that the shipments to Chicago exceed the aggregate of those three?

A. Yes sir, they would.

Mr. SEVERANCE: That is all.

695 Re-cross examination by Mr. COWAN:

Q. What is that?

A. Well, the market at Chicago has a wider scope, perhaps for different classes of live stock when it is produced.

Q. Do you recollect now what the rate is to Omaha from the 23½ cent zone, furthest east, say 140 miles, on cattle and hogs?

A. I don't think it would exceed 16½ cents on cattle, perhaps 15½ on hogs. I have not the exact figures.

Q. I thought possibly you might recall now?

A. No, I do not.

Q. Iowa distance tariff plus the bridge toll.

A. Yes sir.

Q. Do you pay that bridge toll on packing house products received by you at Omaha?

A. No sir, there is a switching charge but no bridge toll is assessed.

Q. How do you escape the bridge toll at that point?

A. Well, I presume we do pay it. It comes in another form, we could not escape it.

Q. How is that?

A. We could not escape it. It comes in the way of an annual bill.

Q. Annual rental?

A. Yes sir. I have no knowledge of how that is disposed of. It is an operating affair.

Q. That is an expense which is incident to the delivery
696 of packing house products and dressed meat in addition to the switching charge, whatever that expense should amount to?

A. Yes sir.

Q. Whether it is an annual rental of so many dollars or a wheelage rental of $4.00 per car?

A. Yes sir.

Q. The usual basis for the bridge charge at South Omaha is $4.00 a car in the absence of some annual rental?

A. I believe that is charged on live stock, it varies on different commodities.

Q. On packing house products and dressed meats it is $4.00?

A. No, I don't think it is.

Q. You won't say that it is not?

A. No, I would not say positively, because I have not looked that up.

Q. Speaking of the net weight of the product of live stock in-

cluding the dressed meat and the packing house product, you are not speaking by accurate knowledge with respect to what it amounts to?

A. Only what I have been informed by the various packers that I have conversed with, statements that have been rendered, I have also examined.

Q. Haven't you got that a little too high, Mr. Calkins?

A. Well, I have taken the comparison of tonnage in and out of these interior plants month by month and compared them in

697 that way. They show substantially what I have testified to.

Q. Well, they don't show that hogs will produce of product and dressed meat a certain per cent., those records don't show that?

A. No, my reports don't show that. They show the total of the live stock in and the product out and supplies, etc.

Q. You are speaking of the supplies in and the total live stock in and out?

A. Yes sir.

Q. There are definite figures as to what that amounts to in the report to the Bureau of Corporations, is there not known as the Garfield Report, which shows what the percentage is, how much product live animal produces?

A. I never read the Garfield Report and I have no knowledge of it.

Q. Is it not a fact that you know as a matter of common knowledge that the Interstate Commerce Commission had fixed a basis of rates that should not be higher than the dressed meats and packing house products a good many years ago and that that had been observed up to the first of January, 1902, I mean to say in the published rates, if the published rates had been observed?

A. I believe there was a ruling sometime back of that nature.

Q. That had been the published rate up to January 1902?

A. I think that was the date, yes sir.

698 Q. Now, isn't it a fact that the only change that was made in the rates on the first of January, 1902, was the reduction in the proportional rate on the packing house product east bound, consigned or destined to points east of the Indiana and Illinois state line?

A. No sir. The local rate was reduced as well.

The COURT:

Q. Was that January or August?

Mr. COWAN: In January.

The WITNESS: I don't recollect the date.

The COURT: This contract was in August, I understand.

Mr. COWAN: Yes. Let me call your attention to the history of that affair; that on January first, 1902, the change was made by the reduction in the packing house products and dressed meat rates using a proportional rate of 18½ cents on traffic destined to points east of the Indiana and Illinois state line, and no other change made in the published tariffs at that time. That subsequent to that time, and in August there was a contract made with the Great Western Railroad and the packers to ship on the basis of the present relation

Q. Will you state briefly to the court what it shows without reading it all?

A. Freight earnings per car mile on commodities which we have shown herewith between Kansas City and Chicago per car mile are as follows: cattle 10 3/10 cents a mile, soft coal 11.3 cents per mile, coke 12 cents per mile, corn 11 cents, wheat 12 cents; lumber 12.8 cents, agricultural implements, such as harvesters, 15 cents; agricultural implements, such as mowers and other light articles 15 cents; nails 21.6 cents per mile.

Q. How does the revenue derived by your company from a 50,000 pounds car for instance loaded with coal, lumber or other low grade traffic, compare with the revenue derived by your
673 Company from the transportation of cattle and hogs in a car of the same capacity between the same points or for similar distances?

A. That is per car?

Q. No, the revenue per car?

A. I think I have some figures on that, statements which we have filed, showing the per car earnings on certain commodities between the Missouri River, Sioux City and Chicago are as follows: cattle, $51.70 per car; 36 foot car; hogs, $39.95 per car, common brick $50. per car; soft coal from eastern mines $56.25 per car; coke $60. per car; corn from the Missouri River to Chicago $55. per car; wheat $60. per car; lumber, pine from Chicago to the Missouri River $80. per car; nails from Chicago to Missouri River $135. per car.

Q. Will you file that as Exhibit No. 3½ of your testimony the statement you have in your hand?

A. Yes sir.

(The witness here produced a statement which was marked "Calkins' Exhibit 3½" and filed with the court as part of his testimony.)

674a *Compared Statement Showing the Average Value and Freight Charge Per Car on Commodities Shown Below, Transported Between Chicago, Ills., and Kansas City, Mo., Omaha, Neb., & Sioux City, Iowa, During the Month of July, 1905.*

Commodities.	Weight.	Average carload value.	Transportation rate in cents per 100 pounds except as noted.	Average freight charge per car.
Cattle,				
At Missouri River points...	22,000	$1100.00	23.5	$51.70
Hogs,				
At Missouri River points...	17,000	850.00	23.5	39.95
Brick, common,				
At Chicago, Illinois	50,000	55.00	10	50.00
Soft coal, Eastern,				
At Chicago, Illinois...	50,000	75.00	$2.25*	55.25
Coke,				
At Chicago, Illinois.....	50,000	125.00	2.40*	60.00
Corn,				
At Missouri River points...	50,000	464.29	11	55.00
Wheat,				
At Missouri River points...	50,000	718.75	12	60.00
Lumber, Pine,				
At Chicago, Illinois.....	50,000	580.00	16	80.00
Nails,				
At Chicago, Illinois.....	50,000	800 00	27	135.00

* Rate in dollars and cents per net ton, (2,000 pounds).

Calkins Ex. No. 3½.

Q. Please file as Exhibit No. 4 to your testimony a statement showing the rates charged by your company on cattle and hogs respectively for Chicago, Illinois, from each intermediate point on its line between St. Paul and Missouri River points on the one hand, and Chicago on the other?

A. I have prepared it, and it is quite a lengthy document.

674 Q. Is it the tariffs?

A. No, it is the rates as they exist to-day named in station order.

Q. You need not take up time of the court to read those, it will go into the record.

(The witness here produced a statement which was marked "Calkins' Exhibit 4," and filed with the court as part of his testimony).

No. 26.
674 L.

STATEMENT OF RATES ON LIVE STOCK TO CHICAGO, ILL., FROM POINTS DIRECTLY INTERMEDIATE TO ST.PAUL, MINN., AND MISSOURI RIVER POINTS, WHICH INCLUDES THE C.& M. DIV., C.& C.B. DIV. IN ILLINOIS AND IOWA, LA CROSSE DIV., RIVER DIV., KANSAS CITY DIV., S.C.& D. DIV. MANILA TO SIOUX CITY, IOWA, INCLUSIVE.

(PRESENT RATES)

To Chicago, Ill.		Rates in cts. per 100 lbs.		To Chicago, Ill.		Rates in cts. per 100 lbs.	
From		Cattle	Hogs	From		Cattle	Hogs
C.& M. DIV.				C.& C.B. (Continued)			
Grayland,	Ill.	4	6	Savanna,	Ill.	10.5	14.3
Mayfair,	"	4	6	Thomson,	"	10.5	14.3
Forest Glen,	"	4.5	6	Fulton,	"	10.5	14.3
Edgebrook,	"	4.5	6	Albany,	"	10.5	14.3
Morton Grove,	"	4.5	6	Cordova,	"	10.6	14.5
Golf,	"	4.5	6	Fort Byron,	"	10.6	14.7
Glenview,	"	4.5	6	Rapids City,	"	10.6	14.7
Shermerville,	"	4.5	6	Hampton,	"	11	15
Deerfield,	"	5.5	6.5	Watertown,	"	11	15
Everett,	"	5.5	6.5	East Moline,	"	11	15
Rondout,	"	5.5	6.5	Moline,	"	11.1	15
Warrenton,	"	5.5	6.5	Rock Island,	"	11.1	15
Gurnee,	"	5.5	6.5	Davenport,	Iowa.	14	15
Wadsworth,	"	6	6.5	La Crosse Div.			
Russell,	"	6.5	7	West Allis,	Wis.	7	10
Ranney,	Wis.	7	7.5	Brookfield Jct.,	"	7	10
Truesdell,	"	7	7.5	Pewaukee,	"	8	10.5
Somers,	"	7	7.5	Hartland,	"	8.5	11
Corliss,	"	7	7.5	Nashotah,	"	8.5	11
Franksville,	"	7	7.6	Okauchee,	"	8.5	11.5
Caledonia,	"	7	7.5	Oconomowoc,	"	8.5	11.5
Oakwood,	"	7	7.5	Ixonia,	"	9	12
Lake,	"	7	7.5	Watertown,	"	10	13.5
Milwaukee,	"	7	7.5	Richwood,	"	10	13.5
C.& C.B.Div.in	Ill.			Reeseville,	"	10	13.5
Hermosa,	Ill.			Elba,	"	11	15
Cragin,	"			Columbus,	"	11	15
Mont Clare,	"	4	6	Fall River,	"	11.5	15.5
Franklin Park,	"	4	6	Doyleatown,	"	12	16
Mannheim,	"	5	7	Rio,	"	12.5	17
Bensenville,	"	6.2	7.5	Wyocena,	"	12.5	17.5
Wooddale,	"	6.2	7.5	Portage,	"	12.5	17.5
Itasca,	"	6.5	8	Lewiston,	"	13.5	19
Meacham,	"	6.5	8	Kilbourn,	"	14	19.5
Roselle,	"	6.5	8	Lyndon,	"	15	20
Ontarioville,	"	6.7	8.5	Mauston,	"	16	21
Bartlett,	"	6.7	8.5	New Lisbon	"	16	21
Spaulding,	"	7	9	Orange,	"	16	22
Elgin,	"	7.2	9.3	Camp Douglas,	"	16	22
Almora,	"	7.2	9.3	Oakdale,	"	16	22
McQueen,	"	7.5	9.6	Tomah,	"	16.5	22
Pingree Grove,	"	7.5	9.6	Tunnel City,	"	16.5	22
Hampshire,	"	7.9	10.4	Lafayette,	"	17	22
New Lebanon,	"	7.9	10.4	Sparta,	"	18	22
Genoa,	"	8.1	10.7	Rockland,	"	18	22
Kingston,	"	8.3	11.1	Bangor,	"	18	22
Kirkland,	"	8.3	11.1	West Salem,	"	18	22
Fairdale,	"	8.5	11.5	Medary,	"	18	22
Monroe Center,	"	8.7	11.8	North La Crosse,	"	18	22
Davis Jct.,	"	8.7	11.8	La Crosse,	"	18	22
Stillman Valley,	"	9	12.3	River Division.			
Byron,	"	9.2	12.5	River Jct.,	Minn.	18	22
Leaf River,	"	9.3	12.7	Dresbach,	"	18	22
Adeline,	"	9.6	13.2	Dakota,	"	18	22
Forreston Jct.	"	9.7	13.4	Lamoille,	"	19	22
Harper,	"	9.7	13.4	Homer,	"	19	22
Kittredge,	"	10	13.7	Winona,	"	19	22
Lanark,	"	10	13.7	Minnesota City,	"	19	22
Mt. Carroll,	"	10.2	14	Minneiska,	"	20.5	23.5
Hickory Grove,	"	10.5	14.3	Weaver,	"	21.5	25

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No.26.

674 S

STATEMENT OF RATES ON LIVE STOCK TO CHICAGO, ILL., FROM POINTS DIRECTLY INTERMEDIATE TO ST.PAUL, MINN., AND MISSOURI RIVER POINTS, WHICH INCLUDES THE C.& M. DIV., C.& C.B. DIV. IN ILLINOIS AND IOWA, LA CROSSE DIV., RIVER DIV., KANSAS CITY DIV., S.C.& D. DIV. MANILA, TO SIOUX CITY, IOWA, INCLUSIVE.

(PRESENT RATES)

To Chicago, Ill. From	Rates in cts. per 100 lbs. Cattle:	Hogs.	To Chicago, Ill. From	Rates in cts. per 100 lbs. Cattle:	Hogs.
River Division.			C.& C.B. (Continued)		
Kellogg, Minn.	22.5	25	Bouton, Iowa.	23.5	23.5
Wabasha, "	22	25	Perry, "	23	23.5
Read's Landing, "	22	26	Dawson, "	23.5	23.5
King's Cooley, "	22.5	26	Jamaica, "	23.5	23.5
Lake City, "	23	26	Herndon, "	23.5	23.5
Frontenac, "	24	26	Bagley, "	23.5	23.5
Red Wing, "	25	26	Bayard, "	23.5	23.5
Eggleston, "	25	26	Coon Rapids, "	23.5	23.5
Etter, "	25	27	Dedham, "	23.5	23.5
Hastings, "	25	27	Templeton, "	23.5	23.5
Langdon, "	25	27	Manning, "	23.5	23.5
Newport, "	25	27	Aspinwall, "	23.5	23.5
C.& C.B. Div.in Iowa:			Manilla, "	23.5	23.5
Sabula, Iowa.	13.5	15	Astor, "	23.5	23.5
Lainsville, "	13.5	15	Defiance, "	23.5	23.5
Green Island, "	13.5	15	Earling, "	23.5	23.5
Elk River Jct. "	14	15	Panama, "	23.5	23.5
Teed's Grove, "	14.5	16.5	Portsmount, "	23.5	23.5
Miles, "	15	16.5	Persia, "	23.5	23.5
Preston, "	15.5	16.5	Yorkshire, "	23.5	23.5
Browns, "	15.5	16.5	Neola, "	23.5	23.5
Riggs, "	15.5	16.5	Underwood, "	23.5	23.5
Delmar Jct., "	15.5	16.5	Weston, "	23.5	23.5
Elwood, "	16	17	Kansas City Div.		
Lost Nation, "	16.5	17.5	Buffalo, Iowa.	15	15
Oxford Jct., "	17	18	Montpelier, "	15.5	15
Hale, "	17.5	18	Fairport, "	16	15
Olin, "	18	18	Muscatine, "	17.5	17
Worley, "	19	18	Ardon, "	17.5	17
Martelle, "	20	18	Medura, "	17.5	17
Paralta, "	20	18	Cone, "	18	17.5
Marion, "	21	18.5	Gladwin, "	18.5	17.5
Louisa, "	21	19	Haskins, "	19	19
Covington, "	21	19.5	Washington, "	20	19
Atkins, "	21	19.5	Titus, "	20.5	19
Newhall, "	21	20	Rubio, "	21	21
Van Horne, "	21	20	Richland, "	21	21
Keystone, "	22	21	Linby, "	22	21
Elberon, "	22	21	Parson, "	22	21
Vining, "	22	21	Rutledge, "	22	21
Gladstone, "	22	21	Ottumwa, "	22	21
Tama, "	22	21	Bidwell, "	22	21
Potter, "	22	21	Willard, "	22	21
Dunbar, "	22	21	Blakesburg, "	22	21
Pickering, "	22	21	Brompton, "	22	21
Ferguson, "	22	21	Foster, "	22	21
Haverhill, "	22	21.5	Moravia, "	22	22
Capron, "	22	22	Trask, "	22	22
Melbourne, "	22	22	Darby, "	22	22
Rhodes, "	22	22	Rathbun, "	22	22
Collins, "	22	22.5	Mystic, "	22	22
Maxwell, "	22	22.5	Jerome, "	22	22.5
Elwell, "	22	22.5	Seymour, "	22	23.5
Cambridge, "	22	22.5	Sewal, "	22	23.5
Huxley, "	22	22.5	Powersville, Mo.	22	23.5
Slater, "	22	22.5	Lucerne, "	22	23.5
Madrid, "	22	23.5	Newton, "	22	23.5
Woodward, "	23	23.5	Harris, "	22	23.5

674d
No. 26.

STATEMENT OF RATES ON LIVE STOCK TO CHICAGO, ILL., FROM POINTS DIRECTLY INTERMEDIATE TO ST.PAUL, MINN., AND MISSOURI RIVER POINTS, WHICH INCLUDES THE C.& M. DIV., C.& C.B. DIV. IN ILLINOIS AND IOWA, LA CROSSE DIV., RIVER DIV., KANSAS CITY DIV., S.C.& D. DIV. MANILA TO SIOUX CITY, IOWA, INCLUSIVE.

(PRESENT RATES)

To Chicago, Ill. From		Rates in cts. per 100 lbs. Cattle	Hogs.	To Chicago, Ill. From		Rates in cts. per 100 lbs. Cattle	Hogs
Kansas City Div. (Continued)				Kansas City Div. (Continued)			
Osgood,	Mo.	22	23.5	Randolph,	Mo.	23.5	23.5
Gault,	"	22	23.5	Thornton,	"	23.5	23.5
Laredo,	"	22	23.5	S.C.& D. Div.			
Niantic,	"	22	23.5	Sioux City,	Iowa.	26	23.5
Chula,	"	23	23.5	Morning Side,	"	26	23.5
Sturges,	"	23	23.5	Glen Ellen,	"	26	23.5
Chillicothe,	"	23	23.5	Flanders,	"	26	23.5
Dawn,	"	23	23.5	Luton,	"	24	23.5
Ludlow,	"	23	23.5	Owego,	"	24	23.5
Braymer,	"	23	23.5	Hornick,	"	23.5	23.5
Cowgill,	"	23.5	23.5	Grant Centre,	"	23.5	23.5
Polo,	"	23.5	23.5	Rodney,	"	23.5	23.5
Elmira,	"	23.5	23.5	Mapleton,	"	23.5	23.5
Lawson,	"	23.5	23.5	Ute,	"	23.5	23.5
Excelsior Springs,	"	23.5	23.5	Charter Oak,	"	23.5	23.5
Moseby,	"	23.5	23.5	Kenwood,	"	23.5	23.5
Stockdale,	"	23.5	23.5	Bell,	"	23.5	23.5
Bement,	"	23.5	23.5	Arion,	"	23.5	23.5
Liberty,	"	23.5	23.5	Buck Grove,	"	23.5	23.5
Birmingham,	"	23.5	23.5				

[illegible] number of [illegible] of [illegible] [illegible]
For the [illegible]

[illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]: Refer to the [illegible] of [illegible] on the [illegible] [illegible] [illegible] for the [illegible] of [illegible]. For [illegible] of [illegible] [illegible] [illegible]

EXHIBIT 5, Page 2. 674f

STATEMENT SHOWING THE RECEIPTS OF LIVE STOCK AT THE MARKET POINTS SHOWN.

FOR THE YEARS 1898 TO 1904, INCLUSIVE.

S T J O S E P H, M O.

Year	Cattle	Hogs	Sheep	Total
1898	225,984	1,034,125	127,707	1,387,816
1899	286,287	1,401,794	258,393	1,946,474
1900	379,967	1,678,521	388,308	2,446,796
1901	425,022	2,105,209	525,933	3,056,164
1902	#517,394	1,697,721	560,653	2,775,768
1903	579,936	1,700,564	599,189	2,879,689
1904	550,549	1,656,847	794,379	3,001,775

INCLUDES CALVES.

S O U T H O M A H A, N E B.

Year	Cattle	Hogs	Sheep	Total
1898	812,244	2,101,387	1,085,136	3,998,767
1899	837,563	2,216,482	1,086,319	4,140,364
1900	828,204	2,200,926	1,276,776	4,305,905
1901	818,003	2,414,052	1,314,841	4,546,896
1902	1,010,815	2,247,428	1,742,539	5,000,782
1903	1,071,177	2,231,067	1,863,763	5,166,007
1904	944,192	2,299,627	1,754,365	4,998,184

Exhibit No. 5 Page 3. 67488

STATEMENT SHOWING THE RECEIPTS OF LIVE STOCK AT THE MARKET POINTS SHOWN, FOR THE YEARS 1898 TO 1904 INCLUSIVE.

S O U T H S T P A U L, M I N N.

Year	Cattle	Hogs	Sheep	Total
1898	173,316	338,405	430,194	941,915
1899	169,888	369,243	383,598	922,729
1900	176,172	500,415	489,574	1,166,161
1901	155,843	616,796	332,367	1,105,006
1902	265,721	667,526	602,340	1,535,587
1903	260,195	759,542	875,640	1,895,377
1904	351,974	881,635	772,766	2,006,375

*S I O U X C I T Y, I O W A

Years	Cattle	Hogs	Sheep	Total
1898	300,932	474,238	20,861	796,036
1899	348,109	568,306	36,081	952,496
1900	300,432	833,141	61,342	1,194,920
1901	307,529	959,964	66,930	1,334,423
1902	399,128	1,007,762	61,275	1,468,165
1903	372,506	1,007,900	41,774	1,422,180
1904	326,657	1,113,177	28,464	1,468,298

701 The COURT: I sustain the objection to that. That is a matter of agreement of which he may not have any knowledge now.

Mr. COWAN:

Q. You said yesterday that these markets, at Cedar Rapids, and other points that you mentioned, Ottumwa and so on, would be more or less affected if there was a change in the rates; that they have to have a lower rate than the live stock in order to exist, as I understood your answer. I will ask you if it is not a fact that in actual practice, the Fort Worth market which was established three years ago, has become a larger killing point than all of the interior Iowa stations put together, in spite of the fact that the dressed meat and packing house product rate is 20 per cent. higher than the live stock rate into and out of Fort Worth?

Mr. SEVERANCE: I object to that as immaterial and incompetent.
The COURT: Overruled, let's see what he knows about it.

A. I have no personal knowledge of the conditions surrounding the killing and shipping of live stock at Fort Worth or Texas points, but I should say from my observation that the conditions surrounding the Fort Worth plant and those which are
702 located down at interior points in Iowa, are very much different.

Mr. COWAN:

Q. I did not ask you that, I ask you whether you knew it was a fact?
A. No sir, I do not.

The COURT:

Q. You don't know anything about it?
A. I don't know anything about it.

Mr. COWAN:

Q. Have you had occasion to make out within the last six or eight months, or have you made out a statement showing the consist of your freight trains passing east bound through Savannah?
A. I believe I did prepare such a statement for the Interstate Commerce Commission.
Q. I will ask you if it is not a fact that that statement contains the consists of all trains passing east bound out of Savannah, from October 1st to the 15th, 1904, and February 1st to 15th, 1904, and I will ask you if that statement did not show that the average of the cars in the trains carrying live stock was 33.6 cars for the October shipment and 32.3 per train for the February shipment and that of trains not carrying live stock the average wa- 27.9 cars for the October shipment and 25 cars per train for the February shipment?

A. I believe they required information of that nature but
703 what the percentages of live stock and dead freight in each train was, has passed out of my memory. I don't remember it at all.

Q. Well, I will ask you if you don't recollect it to be a fact that it showed that the live stock trains contained the most loaded cars, as I contended in the trial of that case in which you made the statement?

A. I could not say, the reports will show.

Q. Have you got a copy of that statement anywhere?

A. It is possible that I have.

Q. That is made up from the train conductor's books, is it not?

A. It is made up from the actual consists of the trains between those points, yes sir.

Q. I wish you would examine and see if you can find a copy of that statement and if not I would like to have you verify these figures that I have read, and see if they are correct. They are taken from your report. I don't mean to testify to them but I want you to do the testifying but if you will look at the copy of my brief on page 62, you will find that statement?

A. Very well.

Q. Is it not a fact from your observation of the live stock traffic that a train carrying live stock cars across the Mississippi river and coming into Chicago from Iowa are heavier trains, that is,
704 have more loaded cars of live stock than the loaded cars of all freight in other trains not carrying live stock?

A. I don't exactly catch that question.

(The question was then read.)

A. Well, I would not want to answer that question off hand.

Q. Don't you recollect from the statement that you made?

A. No sir, I do not, I don't remember.

Q. Whatever that statement was it was a correct statement?

A. It certainly was, yes sir.

Q. Yesterday when you said the rates on live stock into Cedar Rapids, for example or Ottumwa and the dressed product out were more than live stock rates, from the point of shipment of the live stock to Chicago, you made that statement by adding the two rates per hundred pounds together, did you not?

A. Yes sir.

Q. How much packing house product did your road carry out of these towns which have the interior packing plants in Iowa, did you give that statement yesterday or have you it?

A. I did not give it, no sir.

Q. Have you the statement?

A. I have not prepared any specific figures, but I have a report of that character.

Q. About how much, do you recollect?

A. Well, I think we would average 150 cars of hogs into Cedar Rapids a month. And perhaps as many into Ottumwa.

Q. How many cars of dressed meat and packing house products did you carry out of those places?

705 A. Well, those houses intend to average, or give us the product from all the raw material that we take in. It might vary from month to month. I have known months when we would get 200 carloads of packing house product from T. M. St. Clair & Company in Cedar Rapids and then it would drop down.

Q. Well, you have the definite data in the office?

A. Yes sir.

Q. I wish you would prepare it and file it so as to become a part of your testimony, a correct statement showing the amount of receipts for the same year that you gave the others.

Mr. SEVERANCE: We, of course, will have an opportunity to examine Mr. Calkins about it if that is done.

The COURT: Oh, yes.

The WITNESS: What period would that be for?

Mr. COWAN: Of the number of cars of dressed meat and packing house products you handled out of interior Iowa packing town, Ottumwa and Cedar Rapids and such others as you have on your line.

A. For what period?

Q. For the same period that you gave the figures on the Missouri river. I think it was the year, the fiscal year of 1905, wasn't it? Whatever period it was.

A. 1904.

706 Q. Where is the packing house product consigned, where does it go to, that you ship out of Cedar Rapids and Ottumwa, principally?

A. It goes to various points, principally south and east.

Q. Passing through the Mississippi river gate-ways?

A. And Chicago, yes sir.

Q. On what rate does it move when it passes through the Mississippi River gate-way?

A. It depends on its destination.

Q. Well, it is on a proportional to the Mississippi river?

A. Yes sir.

Q. And then the rates from there to the point of destination?

A. Yes sir, the balance of the rates.

Q. It is a combination of the proportional to the Mississippi river and the rate from there to the destination?

A. Yes sir.

Q. When it comes to Chicago that comes on the local Chicago rate?

A. Yes sir.

Q. The combination of the proportional to the Mississippi river gives a less rate to other points than Chicago, does it not, except points taking the Chicago rate?

A. Well, I don't know just what you mean by that question.

Q. Well, for example in shipping to Indianapolis, that shipment would come to the Mississippi river on the proportional to the Mississippi river and then take the Mississippi River rate into Indianapolis, with the Indianapolis rate added?

707 A. You mean by our earnings would be less on the Indianapolis shipment than it would on the Chicago local?

Q. No, I am just speaking of what the shipper would have to pay?

A. The rate would be higher.

Q. There is no rate shipping from Cedar Rapids to Indianapolis that applies as one through rate, does it?

A. No sir, not as a through rate.

Q. In order to arrive at that rate you would add the proportional from Cedar Rapids to the Mississippi river and the rate from the Mississippi river to Indianapolis?

A. Yes sir.

Q. What is the proportion from Cedar Rapids to the Mississippi river?

A. I believe it is four cents.

Q. Now if it is destined east of Chicago to New York, for example, it is shipped the same way, on the proportional to the Mississippi river——

A. And then plus the percentage of the proportional beyond.

Q. Suppose that a carload was being shipped from Cedar Rapids to Buffalo or better still I will take it to New York city. The Mississippi river rate would be 116 per cent. of the New York City rate, would it not from Chicago?

A. I don't recollect. I think that is the basis of the rate. That is the Savannah rate, as we would call it, the Mississippi river point. That is west bound. I don't know whether that is the basis for east bound business or not.

708 Q. Well, assuming that it is, whatever per cent. it is. A Cedar Rapids man would have to add whatever the proportional is which you say you think is four cents from Cedar Rapids to the Mississippi river and then adding them together would make his rate to New York?

A. Yes sir.

Q. So that proportional to the Mississippi river, was that readjusted or changed in any way when the change was made in the rate from the Missouri river on packing house product in August, 1902?

A. It was changed, but whether it was changed at the same time or not, I cannot say.

Q. Have you got a tariff of those proportional rates, showing what they were previous to 1902 and what they were after?

A. I think we could produce that.

Q. I wish you would furnish me one of each, if you can, and if you cannot make a typewritten statement of it showing what the proportional rate was previous to the change?

A. Yes sir.

Q. How long—Showing how long it was in effect, if you can?

A. Yes sir.

Q. And when it was changed, and what change was made in the proportional. You made a statement yesterday in reference to the return transportation of men in charge of live stock giving the figures as to how much passenger fare it would amount to.

A. Yes sir.

709 Q. Was that statement of return transportation or actual return transportation?

A. Actual figures, procured from our Ticket Auditor's record.

Q. Have you any figures to show the amount of live stock delivered by you from Iowa into Chicago?

A. I haven't them with me, no sir.

Q. How is that?

A. I haven't them with me.

Q. The figures that you gave with respect to the return transportation were on what shipments, all of your shipments from the west?

A. No sir, shipments coming from stations that were directly intermediate between the Missouri river points and St. Paul, including those terminals.

Q. That included your lines, also in Minnesota?

A. Only such as would be directly intermediate between St. Paul and Chicago.

Q. And between Sioux City and Chicago?

A. Sioux City and Chicago, Omaha and Chicago and Kansas City and Chicago.

Q. Here is a map in your annual report. If you can without too much trouble I wish you would be kind enough to point out the territory in which that return transportation applied.

(Witness examines map referred to and places thereon pencil marks indicating as requested.)

710 Q. That is the Mississippi river that you are marking now?

A. That is right. We bring a great deal of live stock through Savannah to Chicago and that line must be included.

Q. Well, it took in all of these lines, didn't it to the Missouri river?

A. No sir, we didn't take in this territory at all. We took in the territory that would be affected by the reductions in this case.

Q. Didn't you take in this line?

A. No sir, that is not intermediate between these points. It begins here at Sioux City, Omaha, Kansas City and St. Paul.

Q. Now, would the rates on your line from Canton, Hudson, Rock Valley and east to your crossing of the Mississippi river *river* at Prairie du Chien, would those rates be affected by complying with the Commission's order in this case?

A. Yes sir they would.

Q. Why didn't you include that line in your return transportation?

A. Well, I have just the intermediate points between the terminals as specified.

Q. Are those points intermediate on that line?

A. No sir, they are not considered intermediate and every line in establishing these reductions from St. Paul to Chicago, every other line, would necessarily fix a rate for us at certain junc-

711 tion points. I will cite the line of the Great Western Railway. They would carry the reduction from St. Paul through

to Hampton, Iowa, which would necessitate our making a reduction from that point. Also the line of the M. & St. L., in carrying the St. Paul rate they would carry it through—I think it is Mason City or Albert Lee and that would necessitate our establishing or fixing the same rate through that territory.

Q. How are you able to keep up the Sioux City cattle rate?

A. The Sioux City cattle rate?

Q. Of 25 cents, if the rates up there would be affected because they are lower at some other place?

A. The rate is 23½ from Sioux City on cattle.

Q. What is it on hogs?

A. 25.

Q. How are you able to keep the hog rate up then?

A. Well, the most of the hogs that move out of Sioux City or cattle, move out of there on the balance of the through rate.

Q. Are you able to state what that is generally, from Sioux City?

A. I could not answer for all lines, no sir. We have ten or fifteen or twenty cars a day.

Q. What amount of damage claims per carload (if you estimate it per carload) do you pay on your total live stock business and what amount on your packing house product and dressed meat business?

712 A. Why, as I stated yesterday I have not prepared any specific figures, but I know that the live stock, the damage paid on live stock for delays and shrinkage and declines in the market and so forth very greatly exceed what we pay on provisions and fresh meat.

Q. You mean that it exceeds it per car. Have you estimated it per car?

A. No, I estimated it in amount, the different totals.

Q. What number of live stock cars—The number of live stock cars handled very greatly exceeds the amount of dressed meat and packing house products, does it not?

A. Yes, it would into the Chicago market.

Q. Very greatly.

Mr. SEVERANCE: The witness did not say very greatly.

713 Mr. COWAN: Well, you furnished the figures yesterday on how much packing house product and dressed meat you handled?

A. Yes sir.

Q. And the report of the Stock Yards Company shows how many cars of live stock you handled?

A. Yes sir.

Q. Will you please file a tariff of the rates charged by your road between stations on its lines, on live stock; also the packing house products and dressed meat and if you do so, I wish you would kindly furnish a tariff of the Western Trunk Line Committee that they issue, showing the joint tariff on the Chicago and Missouri River lines.

A. Do you want just the joint tariff or the local and the joint.

Q. I want to get your own issue of your local tariffs, your tariff

of your own issue and then the Western Trunk Line Committee tariff?

Mr. SEVERANCE: You want the tariffs showing the rates into all these points?

Mr. COWAN: Yes, these tariffs showing the rates between stations on his line, and then the Western Trunk Line Committee tariff showing the joint tariff.

The WITNESS: You want the rates to Chicago?

Q. Now, the joint rates to and from the various stations on these lines that will cover the territory, cover all these lines.

714 Mr. SEVERANCE: He wants the rates into the Missouri River points into Chicago and St. Paul.

Mr. COWAN: If I can go up to Mr. Mahoney's office and get one of those files, I can do it myself.

The WITNESS: Well, I will furnish it, yes sir.

Q. Is it not a fact that all the joint rates of the carriers are made by and through the channel or means of the Western Trunk Line Committee to which they all belong to and through which they publish all of the joint rates on everything?

A. No sir, I don't think it did.

Q. What is the length of the cars most usually used in this traffic?

A. Thirty-six foot, the live stock cars.

Q. The private car line companies furnish a large number of cars used in the traffic, do they not?

A. Yes sir.

Q. And their cars are practically all 36 feet?

A. I believe they are practically that.

Q. The cars built in recent years by all the lines have been about the 36 foot dimensions?

A. It is considered the standard car.

Q. The old short cars are not used except under stress of circumstances?

A. They are almost obsolete.

Q. Has your company a contract for cleaning cars?

A. No sir, not to my knowledge. It is usually done by

715 our own men I believe.

Q. I wish you would make a statement of the total amount of damage claims paid on the dressed meat and packing house products. You have stated it as to the live stock. Make it for the same period on dressed meat and packing house products. In estimating the live stock tonnage you always estimate the amount of the minimum stated in the tariff, do you not?

A. No, the actual weight. It would not be less than the minimum fixed, but the tonnage carried would be based on the actual weight.

Q. But the actual weight carried might be less than the minimum and often times is less?

A. In some instances, yes sir.

Q. Is it not a fact that these cattle in Western Iowa are generally the heaviest cattle that come to this market?

A. Yes sir.

Q. How many do they load in a car usually?

A. Well, of corn fed, what we call corn fed cattle, from 18 to 21.
Q. What do these cattle weigh*t?*
A. From 1200 to 1600 pounds.
Q. What are the cars usually bedded with?
A. Sand.
Q. From that locality?
A. Well, it is according to the preference of the shipper.
716 Some prefer sand and some prefer hay. We provide sand at all stations for the bedding of those cars. The majority of them prefer to use that article for bedding.
Q. Do you charge the shipper anything for the bedding?
A. No sir. We do if it is put in the car by us, but we furnish the sand free and he puts it into the car himself.
Q. You spoke of the price yesterday of the cattle, at these various markets. Where do the better prices prevail? At the Missouri River or Chicago?
A. I think I spoke more particularly of hogs, yesterday than cattle.
Q. Well, take it on the hogs.
A. It varies at different periods according to the animal that is to be offered for sale.
Q. Isn't it a fact that in actual practice that you ship in cattle from the Missouri River for the purpose of selling them, and you offer them for sale, the packers make a bid on them and you then ship them into Chicago and sell them, that the most you can expect is the difference in the amount of the freight.

Mr. SEVERANCE: I object to that as immaterial to this inquiry.
The COURT: I will let him answer.
A. Well, I could not answer that. I have had no experience in that line personally. It is a matter of market conditions
717 which is supposed to be open to competition.

Mr. COWAN:

Q. You said your earnings would be reduced if this rate adjustment was made. Do you mean that it would be reduced in the amount you estimated, if the shipments took the same direction that they take now, or did you mean that it would be reduced if the shipments were changed and some of the stock came to Chicago, more of the stock came to Chicago than went to the Missouri River?
A. I arrive at those figures by using the business we moved during the calendar year, 1904, to Chicago.
Q. In arriving at those figures did you get the amount of live stock shipped in from points on your line, in the intermediate territory?
A. Yes sir.
Q. Did you take that from stations up to the Mississippi River?
A. Wherever the rate would be affected by the reduction.
Q. Did you estimate that it would be clear on to the Mississippi River?
A. No sir.
Q. How far did you estimate the rate would be affected?

A. About 145 miles east of the Missouri River.
Q. And then you just——
A. Well, it would be a little further than that.
Q. Then you just estimated it in the 25½ cent belt?
A. It would carry further than the 25½ cent belt, it would
718 reduce the rates until the 20 cent basis was fixed and it would also fix the rates on live stock from Cedar Rapids and intermediate points of 13½ cents.
Q. Can you furnish a statement of the number of car loads you used in making your estimate?
A. Yes, I think I can.
Q. Make a note of that please, to furnish that. That is all.

Mr. SEVERANCE: Your Honor, I would like to call attention to something in the record. It is not very important but it reads a little wrong. On page 688 the witness had testified as to the disastrous results to these interior packers if those rates were equalized. Then I asked the question, "What would be the final result of such an inquitous position if it should be made at Mason City?" And I immediately added, "That is a joke." The reporter in writing that put in his answer before my remark, "that is a joke." His answer is, "I think it would." I don't mean to be understood as saying that Mr. Calkins' answer is a joke.

Mr. RAYMOND:

Q. Do you intend to say in reply to Mr. Calkins, in reply to one of his questions, that there was a bridge toll charged over the Union Pacific Bridge at Omaha?
A. I believe there is, yes sir, on Iowa business.
719 Q. Do you know anything about that?
A. Well, I have not got any specific information in regard to that.
Q. Don't you know that your road hauls the trucks of the Union Pacific Road from Council Bluffs to South Omaha, a distance of eleven miles?
A. I know very little about that Union Pacific contract.
Q. Don't you know that the Rock Island has the same kind of a lease?
A. I believe they have.
Q. Don't you know that the Great Western formed itself over to a similar lease?
A. I think there was something of that kind, yes sir.
Q. Why, it costs you something to go to South Omaha from Council Bluffs, don't it?
A. I should say it did, certainly. It is a very expensive piece of road.
Q. Instead of building your own track, you used somebody's else?
A. Yes, we used the Union Pacific track.
Q. You have no knowledge about what the arrangement is?
A. No, I have not.

Q. But you do know that it applies to all freight, don't you? All your freight trains go over that track, don't they?

A. Yes sir.

Mr. Lund: I don't know that I understood you about the effect of a compliance with the Commission's order in the way of reduction of these rates from intermediate points. Now, to comply with the Commission's order will compel a reduction of the 21½ cent rate from the Missouri River, in 20 cents. Now, how far cost would that reduction go? Wouldn't that extend proportionally through the State of Iowa to the Mississippi River?

A. It would reduce the rates on the Northwestern road from Council Bluffs to Boone. There is where the 21½ cent rate begins. Then it would reduce the rate until the 20 cent basis was reached. The 19½ cent rate that is now carried on provisions and packing house products would be the maximum from Des Moines and intermediate points east thereof until the 11½ cent rate was reached at Cedar Rapids. That would be the maximum rate at Cedar Rapids to intermediate points and Chicago.

Q. I had supposed, and that is the reason I was asking the question, that the basing rate now from all intermediate points in Iowa was the 21½ cent rate from the River, and that that basing rate extended from the Missouri River to the Mississippi River?

A. Oh, no sir.

Q. It would be simply then up to the point where you met the 20 cent rate?

A. Yes sir.

Q. Now, I want to ask another question——

The Court: Wait a minute. Where is that point where you meet the 20 cent rate?

A. We would meet the 20 cent rate about 200 miles east of Omaha. The 21 cent rate is carried about 100 miles east of Omaha. The rate from Eastern Iowa points, they are carried down all the way through Eastern Iowa, they are graded down.

Mr. Lund:

Q. Another question on that same line. Did you, in your estimate of the loss that would be sustained by your company, by a compliance with the Commission's order and the reduction of the rates on live stock, which would be made necessary therefor, include anything except the reduction in this intermediate territory? I mean by that, did you include in making the estimate, the reductions west of the Missouri River that would necessarily result?

A. No sir. Neither did I take into consideration the business that would originate on connecting lines that we meet and handle through to Chicago. Also there was no account made of the reductions that would occur north and west of Sioux City and St. Paul.

Q. That is what I understood.

A. All intermediate points on our own rails.

Mr. Sheppard: I would like to ask a question. How will the interests of the Chicago Live Stock Exchange, the complainant before

the Commission, be promoted by restoring the former rates on the products?

722 A. How would the interests of that Exchange be promoted?

Q. Yes, by restoring the former rates on the products, the former rates being the same as on the live stock or about the same?

A. Well, I don't see how it would affect them. It certainly would not affect them directly.

Q. Wouldn't it increase the number of live stock that they would sell on Commission?

A. If the interior markets were driven out of the business it would certainly force that live stock to the Chicago market.

Q. It is charged in this case -at the Chicago Live Stock Exchange is only interested in the way of its commissions on live stock which it handles and sells? Isn't the making of the rate on the product lower than on the live stock from the Missouri River to Chicago, is not the affect of that to divert the shipments of live stock to the Missouri River markets which would otherwise go to Chicago? Isn't that the tendency of that reduction in the live stock rates,—I mean in the product rate?

A. Well, I presume it would.

Q. If the reduction of the product rate were reduced the live stock rates will benefit the Chicago Live Stock Exchange by increasing the amount of live stock they will sell on commission, will this not also benefit the Chicago Stock Yards by increasing

723 the number of cattle that they will handle of live stock?

A. Their interests are mutual.

Q. Do not the lower rates on products and on live stock *incourage* the slaughtering of live stock nearer home, near to where it is raised?

A. I think it would, yes sir.

Q. That adjustment of rates then, benefits the nearby markets, the stock markets?

A. I think the present adjustment gives them a fair means of manufacturing the product that is tributary to their plants.

Q. The reduction of the product rate then from the Missouri River to Chicago, without reducing the live stock rates, is in the interest of the Missouri River markets rather than Chicago, is it not?

A. I presume it would.

Re-examination by Mr. SEVERANCE:

Q. Counsel has gone into this organization called The Chicago Live Stock Exchange, and their interests. Now, in making the rates, isn't it a fact that it is customary for the traffic men to consider the interests of the producers and the consumers and the people living in the territory along the line of their road rather than

724 the interests of a lot of Commission men living off at a terminus?

A. Absolutely so.

Q. You have already stated that these gentlemen who have made this complaint have no interest as I understand in the sub-

ject matter whatever except as they can get commissions for selling the live stock?

A. I said there might be one or two cases of that kind but as a general proposition I don't think they have.

Q. Now, they have a monopoly of the business of selling live stock out here at the Yards, haven't they?

A. Yes sir.

Q. No other man that don't belong to this little Association can sell any live stock there, can he?

A. Well, I believe the Stock Yards Company says that any one can sell stock there, but it is not profitable for the shipper to handle his business in any other manner except through a commission firm.

Q. That is made so by this Exchange itself, isn't it?

A. Yes sir.

Q. Because of their control of the situation?

A. Yes sir.

Q. A party that ships a carload of stock in here has to pay a tribute to these gentry in the shape of their commission?

A. Yes sir.

725 Q. You say they also advance money on consignments of live stock?

A. Yes sir.

Q. And they charge interest for that, don't they?

A. Yes sir.

Q. So they loan money and get commissions and that is the extent of their interest, so far as you know?

A. Yes sir.

Q. What is the commission that they get for selling live stock per car, or do they sell it by the hundred weight?

A. I think it is 50 cents per head on cattle and $6 a car on hogs. For double-deck cars, it is more than that.

Q. Fifty cents a head on cattle?

A. Yes sir.

Q. Suppose a steer weighs a thousand pounds, what do you get for hauling that steer from the Missouri River on the local rate of 23½ cents?

A. $2.33½.

Q. And if you hauled that *steer* on a proportional from the West, you will sometimes haul it as cheap as 13 or 14 or 15 cents?

A. $1.13.

Q. I mean per hundred weight?

A. Yes sir.

Q. And if a—for a thousand pound steer you would get ten times that much which would be $1.30 or $1.40 or $1.50?

A. Yes sir.

Q. So that for the service of selling this steer in this market, these gentlemen exact one third of all you get for bringing

726 that steer five hundred miles over your rails?

A. Yes sir.

Q. And sometimes more than one-third if your rates happen to be less than $1.50 on a thousand pound steer.

A. Yes sir.

Q. What services do they perform to earn this extraordinary sum of money?

A. Well, they are supposed to be placed in the different selling pens at the Yards, by the Stock Yards Company who also make a charge.

Q. These gentlemen are in the pens, are they, these sellers?

A. Those sellers, yes sir.

Q. Who are the purchasers?

A. The packers as a rule.

Q. Who fixes the price? That is fixed by the packers, isn't it?

A. Well, I am not prepared to say that. That is an open question.

The COURT: That is a matter for another case.

Mr. SEVERANCE:

Q. Well, this Chicago Live Stock Exchange, this monopoly of gentlemen who get 50 cents per head, they don't fix it, do they?

The COURT: What per cent. is that to the commission merchant?

A. He gets 50 cents a head for the steer.

Q. What percentage is that, suppose the steer weighs 1500
727 or 1600 pounds?

A. The percentage of the price that he brings, you refer to?

Q. Yes.

A. Well, I suppose it would be about 1 per cent.

The COURT: An auctioneer in this city charges 10 per cent. don't he?

A. I am sure I cannot say.

Mr. SEVERANCE: They say the railroad rate is too high and here we show that these men for merely getting into the pen and selling the animal gets, in many cases one third as much as they get for hauling the animal.

The COURT: It has been the practice of the District Court to furnish the business to one auctioneer, in the bankruptcy Court. He gets 10 per cent. The Receiver who sells it will get 1 or 2 per cent. When you come to fix the value of a commission merchant or of an auctioneer in the city of Chicago, you have got to get some other data than ordinary services.

Mr. SEVERANCE: May I call your Honor's attention to the charges made on the Stock Exchange? One-eighth of one per cent. is the charge made for selling stocks in this country, and I think the charge is 1/16 or something like that on wheat. I don't remember exactly, but I know as to stocks. It is ⅛ of 1 per cent. and it would be ⅛—assuming that 1 per cent. is what these gentlemen
get, and I think it is certainly a much fairer comparison
728 than it is to compare it with the auctioneer.

The COURT: I think the auctioneer gets too much.

Mr. SEVERANCE: Because they are practically of the same class, people of the same class; they are each brokers.

The COURT: Well, I guess it all depends, as explained by counsel, they all charge all they can get.

Mr. LYND: All the traffic will bear.

Mr. SEVERANCE: Of course, these gentlemen are in a position to

exact this, having a monopoly. It is not all they can get. They could undoubtedly get twice as much if their gall would go to that extent.

Mr. COWAN:

Q. Isn't it a fact that the live stock exchanges on the Missouri River operate precisely on the same conditions?

A. I believe their prices are uniform.

Q. Isn't it a fact that they have a National Organization to which all of them belong, and that they fix their regulations practically alike in all these principal live stock markets?

A. I know they have associations but I don't know whether it is of a National character or not.

Q. They fix their regulations and prices substantially the same at all markets?

A. I presume so.

Q. And the railroad company don't pay those commissions in any case?

A. No sir.

729 Q. And they don't fix their rates based on what the commissions are in any case?

A. No sir.

Q. And it does not have a thing in the world to do with it?

A. When you compare the interior markets in Iowa with the Chicago market, then it does have a very material effect.

Q. Do you mean to say that it has anything to do with the making of the freight rate?

A. No, I meant in regard to the net results to the shipper.

Q. I am talking about whether the commissions charged have anything to do with the making of the freight rate on cattle?

A. No sir.

Q. Neither does the freight rate have anything to do with the commission?

A. No sir.

Mr. RANSOM:

Q. You were speaking of this 23½ cent belt west towards the Missouri River. Isn't it a fact that since the reduction of the product rate, that the cattle are moved in the same manner out of this 23½ cent belt to Chicago and also to the Missouri River, just the same as they did before?

A. I have not noticed any marked change. I have made no comparison.

Q. You say that you think that the rates into the Missouri River Markets, the Missouri River points, the 23½ cent belt rates are reasonable?

A. I think so, yes sir.

730 Q. Now, do you know what the rate is 100 miles east of South Omaha into Iowa?

A. No, I could not tell you.

Q. It is about 12 cents, isn't it?

A. Somewhere in that neighborhood, on hogs.
Q. And the same on cattle isn't it?
A. No, the rate varies.
Q. Well, it is very little.
A. It is very close together.
Q. Do you consider a 12 cent rate for 100 mile haul throughout all that belt into South Omaha reasonable, compared with a 23½ cent rate for 400 miles to Chicago?
A. I think the rates are fairly adjusted.
Q. Take that case, that is a rate of 12 cents on hogs for 100 miles into South Omaha; now, do you consider that a proper adjustment where you haul 400 miles for 23½ cents more than half as much for 100 miles as you do for 400 or 500?
A. When you take all the conditions surrounding the Missouri River market and the advantages that they derive from the business that is naturally tributary to them——
Q. Well, they can't help being right there. They have got to be somewhere. I want you if you will, to say whether you think a rate for 100 miles at twice the amount that the 500 mile haul is, is a reasonable rate compared with a 12 cent rate, or half of it, for 100 mile haul?
A. I think the rates are very fairly adjusted on their pres-
731 ent scale.
Q. Generally?
A. Yes sir.
Q. As they are adjusted on then 23½ cent belt proposition, running to the Mississippi River both at Sioux City and St. Joe, and Omaha and Kansas City?
A. Yes, I do.
Q. Do you think they are reasonably adjusted as compared with the 23½ cent rate?
A. Yes, I do.

Mr. COWAN:

Q. Mr. Calkins, do you think they were fairly adjusted previous to the change in the relation of the rates and as they now have existed—that is the published rates—for some eight or ten years next previous to January, 1902?
A. There has not been any change in the live stock rates.
Q. I am talking about the packing house product and dressed meat rates and the relative rates. Were they fairly adjusted during that eight or ten years?

The COURT: He has been speaking about the live stock rates, or relative rates between Kansas City and Omaha. Between Kansas City and Omaha on the one part and Chicago on the other. He didn't say anything about a comparison between the rates.
Mr. COWAN: I want to ask him that question.
The COURT: That would not be cross examination. I think he has gone over that.
732 Mr. COWAN: That is a question that I forgot to ask.

The COURT:

Q. Well, what do you think about that, the relative rate as now existing, whether they are right or not?

A. As they stand to-day compared with two or three years ago, is that the idea?

Q. Which is right, the way it is now, or the way it was then?

A. I think the way it is now.

Mr. COWAN:

Q. Do you know whether your rate was changed because of the Great Western contract or because of the judgment that it ought to be so changed?

Mr. SEVERANCE: I don't think that is cross examination.

The COURT: You have gone over that. It is a wise rule never to ask questions of a witness on cross examination unless you think he is going to answer in your favor. If you had ap-lied that heretofore, it would have saved much time.

733 J. N. TITTEMORE, called as a witness in behalf of the defendants, Minneapolis & St. Louis and Iowa Central Railways, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

The COURT: What is your full name, please?

The WITNESS: J. N. Tittemore.

Mr. BAXTER:

Q. What is your occupation?

A. My occupation is that of a railroad man, Freight Traffic Manager, at the present time, of the Minneapolis & St. Louis and the Iowa Central Railways, representing about 1500 miles of intermediate line that does not reach Chicago.

Q. They are defendants in this case?

A. Yes.

Q. How long have you been connected with the Freight Traffic departments of railroads in the United States?

A. About 20 years.

The COURT: Freight man?

A. Freight Traffic Manager, yes, sir.

Mr. BAXTER:

Q. With what railroads have you been connected and in what capacity?

A. Well, in the freight departments of the Minneapolis and St. Paul and *Sioux* St. Marie; with the Sioux City & North-
734 ern and Pacific Short Lines, now part of the Great Northern; with the Des Moines Northern & Western; now part of the Milwaukee, and with the Iowa Central, Minneapolis & St. Louis.

Q. In what capacities?

A. Well, freight chief clerk of the traffic departments, the general freight agency, and for a time I was Assistant to the President. I have been general freight agent, acting General Manager of the Iowa Central for a time, Traffic Manager of the Iowa Central, and now Freight Traffic Manager on both lines.

Q. For what length of time have your duties had relation to the making of freight rates, if at all?

A. About 20 years.

A. I wish you would file as Exhibit number 1 to your testimony a statement showing correctly the rates, in cents per hundred pounds, now charged on cattle, hogs, packing house products, fresh meats, especially in car loads, to Chicago, Illinois, from the Missouri river points and St. Paul and South St. Paul, Ottumwa, Iowa, Des Moines, Iowa, Marshalltown and Cedar Rapids, Iowa. I wish you would explain as to which of those rates your companies participate in?

A. Neither of our companies reach the Missouri river and neither of them reach Chicago. We do not make rates from Ottumwa or Cedar Rapids to Chicago. We do make rates from Des Moines and Marshalltown to Chicago, in connection with other lines, and from St. Paul and Minneapolis.

734*a* EXHIBIT No. 1, J. N. TITTMORE.

Carload Rates to Chicago.

From	Cattle.	Hogs.	P. H. P.	Fresh meat.
Kansas City, Mo.				
St. Joseph, Mo.				
Atchison, Kas.	No rates	via Ia. C	ent. or M.	& St. L.
Leavenworth, Kas.				
Council Bluffs, Ia.				
Omaha, Neb.				
So. Omaha, Neb.				
Nebraska City, Neb.				
Sioux City, Ia.				
St. Paul, Minn.	25c	27c	15.7c	17c
So. St. Paul, Minn.	(*b*) 20c	(*b*) 17.5c	(*a*) 14.6c	(*a*) 15.7c
Ottumwa, Ia.	No rates	via Ia. C	ent. or M.	& St. L.
Des Moines, Iowa	22c	23.5c	18.5c	18.5c
Marshalltown, Ia.	22c	21c	16c	16c
Cedar Rapids, Ia.	No rates	via Ia. C	ent. or M.	& St. L.

(*a*) Applies only on shipments destined to points east of the Ill.-Indiana State line.

(*b*) Applies only on shipments originating beyond the point of shipment.

Tittemore Exhibit No. 1, vol. 6, p. 734.

735 Mr. SEVERANCE: And south of St. Paul?

The WITNESS: And south of St. Paul we participate in such rates.

Mr. BAXTER:

Q. Do your companies, or either of them, make or join in making rates from Missouri river points to Chicago?

A. Do we make rates?

Q. Make or join in making them from Missouri river points to Chicago?

A. We participate with other companies in packing house rates—no, not to Chicago, but via Peoria to the East from the Missouri river, but we do not make such rates.

Q. Well, do you participate?

A. Yes, we do participate.

Q. In relation from the Missouri river to Chicago?

A. No.

Mr. SEVERANCE: Peoria and the East?

Mr. BAXTER: Yes, I understood that, but I wanted to get it clear.

The WITNESS: No, not to Chicago.

Q. I wish you would state, Mr. Tittemore, whether the rates from Missouri river points and the other points mentioned in your Exhibit number 1, on live stock to Chicago, are just and reasonable or not, and state your reasons for any opinion you may express?

A. In my judgment the rates on live stock from the Missouri river, and particularly from the Missouri river zone, are more than just to the shipper and are less than the carrier should re-

736 ceive for the service we render. The Minneapolis & St. L. and Iowa Central Companies do what we call a pick-up business, and I believe that nine-tenths of the traffic is composed of that class of business; nearly all of it is composed of that class of business. If you were to refer alone to terminal rates and handle the business in train-loads, which is not the case, the rates might be considered—the present rates might be considered reasonable. In the first place, take it with our roads; we have to provide stockyards at a considerable expense, to such an extent that at a majority of our country stations it costs us more to provide for the reception and shipment of live stock than it does for the reception and shipment of passengers, if you will; and almost every other kind of freight. One of what I call our six-ten yards, such as is located at Grinell, Iowa, or at Brighton, Iowa, costs us a little more than $1,200.00. We provide scales and scale houses; we provide feed troughs and racks; we pave the yards with vitrified paving brick; in many cases we provide windmills, in some cases use city water. We not only have to shed the yards to withstand summer suns, but also winter snows and winds, and on the whole the yards cost us between $1200 and $1300, nearer $1200 than $1300. The Iowa Central and M. L. & St. L., during the past two years, have done considerable work on their stock yards, and the Iowa Central expended during the last two years approximately $20,000.

737 Mr. SEVERANCE: What is the mileage of the Iowa Central?

The WITNESS: About 550 miles, or $116 and some cents per car per yard.

Mr. BAXTER:

Q. You mean per stockyard?

A. Per stockyard. The M. & St. L. expended approximately $10,000 or approximately $70.00 per yard per annum—per stock yard per annum. In addition to that the transportation facilities that we furnish for live stock on our road are extraordinary. We schedule some livestock trains. We cannot always, on all sections even of our main line, handle full trains of live stock. We oftentimes handle very much less than a train-load, say six or seven cars, but we oftentimes have, say, for illustration, between Hampton and Marshalltown two or three carloads of live stock turn up, and this is not an isolated but almost a regular case, two or three times a week, whether two or three carloads of live stock, and of necessity we must fill up that train with something else, and invariably the two or three carloads of live stock will dictate the handling of that train from the point where the stock originates to destination or to the point at which we turn the business over to another line, making the expense of handling dead freight in that train very much more than it otherwise would be.

738 Q. If you have only two or three cars of live stock in a train does that entitle that train to preference over all other freight trains?

A. Yes, it is my experience that stock trains lose more time at stations, are compelled to make greater speed between stations and handle less revenue tonnage per train mile than any other class of trains on our railroads. Then, again, we have a general expense that attaches to our live stock business in that we have so many branches. I have in mind certain shippers on the Storey City branch of our Iowa Central Line who will turn up two or three times a week with, say, two carloads of live stock. We have to take an extra engine from Marshalltown, run the empties out there, as a usual thing, and bring the cars back to Marshalltown; and that would be true oftentimes on our Newton branch and on our Algona Line into Hampton. There is one other question in consideration in the making of these live stock rates which, it seems to me, cuts a great figure, at least with us. Diversified industry probably makes a country prosperous, and I was figuring out, based on last year's business, that the rates on our live stock had contributed about $1,300,000 to the prosperity of the North-west in this way: That had we had no live stock to ship we would have had 63,000

739 carloads more of grain to ship, and that has always been taken into consideration by me when we were making freight rates. I believe that the freight rates on live stock are too low——

The COURT: Is that on the theory that you want to build up the country?

The WITNESS: Yes.

The COURT: If it were higher they would not ship so much live stock out?

The WITNESS: Well, if you didn't have any live stock, your Honor—each carload of dressed live stock consumes about three to five cars of grain. If we didn't have the live stock we would have the grain at the much higher net revenue. I believe this: That the rates——

The COURT: Do you think that would be better for the country?

The WITNESS: No; and for that reason it has dictated to a great extent the rates made on live stock, in my judgment.

The COURT: To encourage the live stock business?

The WITNESS: Yes, to encourage the live stock business, and make diversified industry. The making of a steer in Iowa is an industry; it is manufacturing business just as cutting a steer into product.

The COURT: It is better for the farm to have steers on it
740 instead of raising all wheat?

The WITNESS: Yes, better for the country.

Mr. BAXTER: I wish you would file, as Exhibit number 2 to your testimony, a statement for the year ending June 30th 1905, showing the total freight earnings of your company, the earnings of your company from cattle; the earnings of your company from hogs; the earnings of your company from packing house products and the earnings of your company from fresh meat.

(The witness produced a statement, which was marked "Tittemore Exhibit 2," which is in words and figures following:)

740*a* EXHIBIT No. "2."

	Ia. Cent.	M. & St. L.
(*a*) Total Earnings year ending June 30th, 1905.....	$2,013,549.32	$2,021,993.49
(*b*) Earnings on Cattle year ending June 30th, 1905.....	59,645.00	39,924.00
(*c*) Earnings on Hogs year ending June 30th, 1905.....	89,162.00	40,542.00
(*e*) Earnings on Dressed Meat year ending June 30th, 1905....	1,432.00	19,172.00
(*d*) Earnings on P. H. P. year ending June 30th, 1905.....	45,321.00	4,099.00

741 Mr. BAXTER:

Q. How does the amount paid by your company for loss and damage to cattle and hogs compare with the amount paid by your company for similar claims in regard to ordinary dead freight?

A. Well, I have no figures prepared on that. Our accounts are kept in such a way it would be very difficult to get the items—to get the exact items, but our claims for damage to packing house and live stock products are comparitively nothing. I think we had but

two small claims last year. We consider that our claims on live stock are very much more—our claims for damage on live stock are very much more than for all other classes of freight on our road.

Q. Are the rates on cattles and hogs mentioned in your Exhibit number 1 affected by competition; if so, to what extent?

A. Yes, in that one road cannot secure business at a higher rate from competing points than any other road, and I believe if it were not for that competition, that rates on live stock would be somewhat higher, more justly based than at present.

Q. Are the through rates on cattle and hogs from the points of shipment mentioned in your Exhibit number 1 to points of final destination greater or less than the sums of the local between those points?

A. The through rates are less than the sums of the locals.

742 Q. What is the established, minimum carload weight for cattle and hogs respectively, on your road, and how does the actual loading on your road compare with that minimum?

A. I will have to refer to data for that, because I don't carry it in my head. The exhibits here so far files I think will show that the length of car, 31 feet and under, 19,000 pounds of cattle——

Q. You need not go into dimensions. State the general result, whether up to or below?

A. Take 13 carloads of cattle—these are actual results on our road—13 car loads of cattle in cars of the 31 foot class; the charges were assessed at the minimum weight of 19,000 pounds each, indicating that the actual weight was minimum or less than the minimum. We take four cars of cattle loaded in cars 33 feet 9 inches; they were assessed at the minimum weight of 20,500 each, indicating actual weight to have been minimum or less. Out of 30 cars in the popular or 36 feet 6 inch class, 14, or 36.8 per cent. were charged at the minimum weights, 22,000 pounds, indicating the actual weight to have been the minimum or less, and the remaining 24 cars, or 63.2 per cent averaged 24,000 pounds or 2,000 pounds for the minimum; the average weight used in assessing freight charges being a little over the minimum of 23,000 pounds. Hogs, out of 26 cars of the 31 foot class, 13, or 50 per cent. were charged at

15,000 pounds minimum or less, indicating below, to the

743 minimum or less; and the remaining 13 averaged 15,500 or 500 pounds over the minimum, the averaged weight used being 15,250 pounds, or 250 pounds above the minimum. Out of 17 cars in the 33 foot class, 10, or 58.8 per cent. were assessed 16,000 pounds minimum, indicating actual weight to have been the minimum or less, and the remaining 7 cars averaged in weight 16,514 pounds, or 514 pounds above the minimum; the average weight used upon which charges were assessed being 16,212 pounds, or a very slight trifle over the minimum. Out of 21 cars in the popular or 36 foot 6 inch class, 12, or 57 per cent. were assessed 17,000, showing the actual weight to have been minimum or less, and the remaining 9 cars, or 42.9 per cent., averaged 18,444 pounds, or 1,444 pounds above the minimum, the average weight used being 17,620 pounds, upon which charges were assessed.

Q. On the paper which you have in your hand do you show the minimum weights for the different assessed cars and the different products?

A. Yes.

Q. I wish you would file that as Exhibit 2½ to your testimony.

(The witness the- produced a statement, which was marked "Tittemore Exhibit 2½," which is as follows:)

743*a* TITTEMORE EXHIBIT 2½.

Established minimum weights governing on live stock from Iowa Cen. and M. & St. L. Stations to Chicago are as follows:

Minimum Weights on Live Stock.

Length of car.	Cattle.	Hogs.
31 feet and under	19000 lbs.	15000 lbs.
33 ft. 9 in. and over 31 ft.	20500	16000
36 ft. 6 in. and over 33' 9"	22000	17000
40 ft. and over 36' 6"	24000	19000
Over 40 ft.	26000	21000

As we do not have access to scale records at Union Stock Yards, we have no way of determining actual net weight of our live stock shipments, but the following information concerning 119 cars shipped from various stations to Chicago in the same month via the same route in cars of the three classes mostly used will give an idea as to how the weights run.

Cattle.

Thirteen carloads of cattle in cars of the 31 ft. class were assessed at minimum weight of 19,000 lbs. each, indicating actual weight to have been minimum or less.

Four cars of the 33ft. 9 in. class were assessed at minimum weight of 20,500 each, indicating actual weight to have been minimum or less.

Out of thirty eight cars of the 36 ft. 6 in. class, fourteen—36.8%—were charged at minimum weights 22,000 lbs.—(indicating actual weight to have been minimum or less) and the remaining twenty four cars—63.2%—averaged 24,000 lbs. weight each, or 2,000 lbs. over minimum. Average weight used in assessment of freight charges on entire thirty eight cars was 23,263 lbs.

Hogs.

Out of twenty six cars of the 31 ft. class, thirteen—50%—were charged at 15000 lbs. minimum each (indicating actual weight to have been minimum or less) and the remaining thirteen averaged 15,000 lbs. each or 500 lbs. over minimum. Average weight
743*b* used in assessment of freight charges on entire twenty six cars was 15,250 lbs.

Out of seventeen cars in the 33 ft. 9 in. class ten,—58.8%—were assessed at 16,000 lbs. minimum (indicating actual weight to have been minimum or less) and the remaining seven cars averaged in weight 16,514 lbs. or 514 above the minimum. Average weight used in assessment of freight charges on entire seventeen cars was 16,212 lbs.

Out of twenty one cars of the 36 ft. 6 in. class, twelve—57.1%—were assessed at 17,000 minimum weight, (indicating actual weight to have been minimum or less) and the remaining nine cars—42.9%—averaged 18,444 lbs. above minimum. Average weight used in assessment of freight charges on entire twenty one cars was 17,620 lbs.

744 Q. Have you a statement showing comparison between the rates per ton per mile charged by your company on cattle and hogs in carloads, and the rate per ton per mile charged by your road on wheat, tropical fruit, vegetables and classified freight, selecting for comparison some representative portion of your road over which said kinds of traffic actually move? Have you prepared such a statement?

A. Yes, sir, I have that.

Q. Can you state briefly what it shows?

A. Well, we have taken Gillman, Iowa; a distance say of 300 miles from Chicago: Cattle $4.40 a ton, or 1.46 per ton mile; Hogs, $4.20 a ton or 1.4 per ton mile; wheat $2.80 a ton or .93 per ton mile. Take the third class, which would include fresh fruit on the one hand and, say, carriages or vehicles on the other, $8.00 a ton 2.66 per ton mile, and take the fourth class, dried fruit on the one hand, and saay woodenware on the other, $5.20 a ton, 1.73 per ton mile; fifth class, sugar and canned goods, $4.20 a ton or 1.4 per ton mile; agricultural implements, Class A, $5.20 a ton or 1.73 per ton mile. Class B, say, sash, doors and blinds, $4.20, or 1.4 per ton mile.

744*a* EXHIBIT NO. THREE.

Statement of Current Rates Per Ton and Per Ton Mile on Various Classes of Freight Between Gilman, Ia., and Chicago, Distance 300 Miles.

Cattle	$4.40 ton	1.467c	ton mile.
Hogs	4.20 "	1.4	" "
Wheat	2.80 "	.933	" "

Classified Freight.

Third class:

Fresh Fruit Carriages	$8.00 ton	2.667c	ton mile.

Fourth class:

Dried Fruit Woodenware	$5.20 ton	1.733	ton mile.

Fifth class:

Sugar Canned Goods	$4.20 ton.....	1.4c	ton mile.

Class A:

Agricultural Impl.	$5.20 ton.....	1.733	ton mile.

Class B:

Sash, Doors, etc.	$4.20 ton.....	1.4c	ton mile.

Q. Under the rates of freight on cattle and on hogs that prevail on your road, has the cattle and hog business been prosperous or otherwise?

A. The live stock business has been prosperous on our
745 railroad; in fact it is the most prosperous business that a farmer in Iowa can engage in.

Q. In your opinion is the service rendered by railroads in the transportation of cattle and hogs more or less expensive than the service rendered in the transportation of packing house products and fresh meats?

A. I did not quite get the question.

Q. In your opinion is the service rendered by railroad companies in the transportation of live cattle and hogs more or less expensive than the service which they render in the transportation of packing house products and fresh meats?

A. I consider that the service rendered is more expensive for live stock than for packing house products and fresh meats.

Q. Is the service rendered by railroads, in your opinion, more or less expensive in the transportation of live cattle and hogs than it is in the transportation of ordinary dead freight?

A. I think that the expense is greater in the handling of live stock than it is on any other class of dead freight, or live either for that matter.

Q. How is the net revenue received by railroads from the transportation of cattle and hogs as compared with the net revenue received by them for the transportation of packing house products and fresh meats?

A. I believe—it is my best judgment that the net revenue received from the transportation of live stock is less than from almost any other—I might say any other class of freight.

746 Q. Beside the cleaning of the car, the bedding of the car, the furnishing of the water, the hauling of the gravel, the sand, the furnishing of the conders or the slag coal for the bedding of the hogs, the maintenance of the yard and all that sort of thing, there is another expense attached to the handling of live stock on our road, for instance, that is serious. We receive our packing house products from one station within a zone, and the rate from that one points is the essential rate. I will take Marshalltown, Iowa. We receive packing house product shipments at Marshalltown for transportation. Now that is the most northerly point on the Iowa

Central road at which we would receive that shipment, but when you come to live stock your zone reaches from about Marshalltown away up into the Northwest, so that in the case of the packer who furnishes his own car, we have no empties to trouble ourselves with, and no expense practically relating to empties, we have to haul the empty car for live stock into the North-west. For instance, I have in mind that the rate from Sheffield, Iowa, 70 miles north of Marshalltown, is one cent higher than the rate on live stock from Marshalltown. We invariably haul that empty car from Marshall-
747 town to Sheffield, a distance of 70 miles, and then we must haul the load back at least that far for $2.20, or for an extra cent per hundred pounds. Then take, for instance, Des Moines, the most northerly point on that branch or of the M. & St. L. that would handle packing house business, Bluffton is 150 miles further Northwest of that, the rate is but a cent or a cent and a half—a cent and a half I think is correct—higher than the rate from Des Moines, and in that case we would haul the empty 150 miles to get a load of live stock and the load back 150 miles further, about 330 miles, and that is true of the entire Northwest, at least so far as our road is concerned.

Q. Your packing houses being situated somewhat on the northern margin of the 23 cent zone?

A. They are largest at the East, Judge Baxter, but the most northerly point, that is Marshalltown and Des Moines would be the most northerly point on our system at which we would receive packing house product shipments.

Q. There being no packing houses on the north of your road?

A. Not in my judgment, that would not be material, but we have the larger proportion of the territory north and west of those packing house centers.

Q. You have spoken about the relative expense of the service of transportating live cattle and hogs as compared with the dressed product. Now, in proportion to the service performed is the net revenue received by railroads for the transportation of live
748 cattle and hogs greater or less than the net revenue received by them for the transportation of ordinary dead freight?

A. It is in my judgment; the net revenue is less, received on the shipments of live stock than on other dead freight.

Q. Have the number of cattle and hogs produced in the territory tributary to your lines increased or diminished in the last five years?

A. Increased, I think.

Q. How does the revenue derived by your company from a car loaded with lumber or other low-grade traffic compare with the revenue derived by your company from the transportation of cattle or hogs between the same points or for similar distances? Have you compiled a statement upon that subject?

A. I believe I have one here. What do you want me to do with it?

Mr. BAXTER: I wish you would file that as Exhibit 4.

(The said statement produced by the witness was thereupon marked "Tittemore Exhibit 4" and is in words and figures following:)

748*a* TITTEMORE EXHIBIT NO. 4.

The following figures are computed on basis live stock minimum weights for 33 ft. 9 in. car (cattle 20,500 lbs. and hogs 16,000 lbs.) and customary loading of the other commodities in cars of that size:

			Distances.
Cattle, St. Paul to Chicago	25c.	51.25	501 Miles
Hogs	27	43.40	
Corn	10	66.00	
H. Coal, Chicago to St. Paul	10	66.00	
Soft Coal	7	46.20	
Brick	10	66.00	
Cement	8	52.80	
Cattle New Ulm, Minn. to Chicago	25c.	51.25	529 Miles
Hogs	27	43.40	
Corn	17.5	115.50	
H. Coal, Chicago to New Ulm, Minn.	11.25	74.25	
Soft Coal	9.5	62.70	
Brick	15	99.00	
Cement	13	85.80	
Cattle Spencer, Ia. to Chicago	23.5	48.18	454 Miles
Hogs	23.5	37.60	
Corn	17	112.20	
H. Coal, Chgo. to Spencer, Ia.	12.5	82.50	
Soft Coal	11.25	74.25	
Brick	12.5	82.50	
Cement	13	85.80	
Cattle, Des Moines, Ia. to Chgo.	22	44.10	361 Miles
Hogs	23.5	37.60	
Corn	13	85.80	
H. Coal, Chgo. to Des Moines, Ia.	12.5	82.50	
Soft Coal	8	52.80	
Brick	9	59.40	
Cement	12	79.20	
Cattle, Eldora, Ia. to Chgo.	22	45.10	316 Miles
Hogs	22	35.20	
Corn	12	85.80	
H. Coal, Chgo. to Eldora, Ia.	11.25	74.25	
Soft Coal	7	46.20	
Brick	9	59.40	
Cement	11.5	75.90	
Cattle, Marshalltown, Ia. to Chgo.	22	45.10	290 Miles
Hogs	21	33.60	
Corn	13	85.80	
H. Coal Chgo. to Marshalltown, Ia.	11.25	74.25	
Soft Coal	7	46.20	
Brick	9	59.40	
Cement	11	75.90	

Cattle Winfield, Ia. to Chgo.	19	... 38.95	232 Miles
Hogs	19	... 30.40	
Corn	11	... 72.60	
H. Coal Chgo. to Winfield, Ia.	7.5	... 49.50	
Soft Coal	7	... 46.20	
Brick	9	... 59.40	
Cement	10	... 66.00	

749 Mr. BAXTER:

Q. I wish you would give very briefly one comparison so the court can see what it relates to. You need not take time to read them all.

A. Well, first, take cattle from St. Paul to Chicago, $51.25 for 501 miles.

The COURT: Per car?

The WITNESS: Per car. We take hogs $43.40, say 501 miles. Take a car of corn, $66.00, 501 miles. We take a car of hard coal from Chicago to St. Paul, $66.00; soft coal $46.20; brick, $66.00; cement $52.80. Then I have gone further into Minnesota, taking a car of cattle——

Mr. BAXTER: That is sufficient.

The COURT: A refrigerator car from St. Paul to Chicago?

The WITNESS: You mean packing house product?

The COURT: Yes?

The WITNESS: I haven't that here, your Honor.

Mr. BAXTER:

Q. Can you state what it would be per carload for packing house product?

A. It would be—we don't do much of that traffic; we do very little of that traffic, but I should figure that we would get out of a car of packing house product—I would have to be refreshed—if I was refreshed as to the rate——

Q. Do you know the rate from one of your packing houses
750 to Chicago?

A. The proportional rate, I believe.

Mr. SEVERANCE: 15.7?

The WITNESS: Yes, 15.7 as I remember.

Mr. SEVERANCE: The proportional rate, 15.6?

The WITNESS: $41.82.

The COURT: Just as much as you get out of the cattle?

The WITNESS: Yes, $43.40; but I will tell you that figure, your Honor, is a paper figure and I don't think should have been in there. We don't haul any hogs on the——

Mr. SEVERANCE: On the proportional?

A. (continued). We don't haul any hogs on the 27 cent rate from St. Paul to Chicago, on the proportional rate, and I ask my statistics clerk to get up statistics representing rates, as well as shipments, but he has put that statistic table here, and I dare say we have not hauled on that rate for years. We haul on a lower rate.

Mr. SEVERANCE: Having taken the 14.6 he is comparing the proportional rate on one with the local rate on the other?

The WITNESS: We do use the proportional rate your Honor, where we do not use the local rate.

The COURT: Go ahead.

Mr. BAXTER:

Q. That makes your rates on both cattle and hogs higher than you actually get?

A. Yes.

751 Q. File as Exhibit number 5 to your testimony a statement showing the rates charged by your company on cattle and hogs respectively to Chicago, Illinois, from each intermediate point on your line between St. Paul and the Missouri river, on the one hand, and Chicago on the other?

A. I will.

(Statement produced by the witness was thereupon marked "Tittemore Exhibit 5," in words and figures as follows:)

* * * * * * *

752 Q. What is your opinion as to the reasonableness of those rates?

A. I believe that the rates on live stock are reasonable.

Q. These are your intermediate rates from points this side of the Missouri river to Chicago?

A. I believe that the rates are less than we should receive for the service we render.

Q. Have you heard any complaint in regard to them from anybody who ships over your line except this complaint here?

A. I have never had a complaint that I can call to mind. If we had a complaint it would be adjusted, or has been adjusted. I can't remember of a complaint.

Q. What is the distance from your nearest competing lines or competing stations generally?

A. We run north and south and through Iowa, Illinois and Minnesota, and some years ago I had a map prepared by our engineering department. I had noticed whenever I was out on the road, and particularly when I was in a vehicle or conveyance out in the country, that I could usually, at any point, hear the whistle of a locomotive on a competing line, and our Board of Directors were constantly after me to get more freight and I defended myself by having the engineer get out the map, and I think at that time

753 it showed that we had a little less than a mile and a half of territory to contribute to our Iowa Central road on either side of the track; that is you got out one and a half miles, half way to some one else, some other road.

Q. Is that true with reference to the whole length of that line?

A. That is the average on the Iowa Central road. When you get into the Northwest that would not be true. That is peculiarly true of Dakota and the Northwest Minnesota lines.

The COURT: Do you think you get a high enough rate on dressed meat and packing house products?

The WITNESS: Well, no, your Honor, I do not. I have contended constantly for a higher rate on live stock that now exists, and I do not believe that the present rate of packing house product is reasonable as a compensation to the carrier.

Q. I wish you would file, as Exhibit number 6 to your testimony, a statement showing for the last three years ending June 30th, 1905, the following: cattle and hog business at Chicago, Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Omaha, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul, Ottumwa, Des Moines, Marshalltown and Cedar Rapids, and explain how that was made up?

A. Well, we consulted the different reports from different points.

Q. Reports of what?

754 A. The statistical reports at the yards, such reports as were issued, or our own records in case we did not have the yard reports, the published reports, and I don't think we got them at all points; at Marshalltown I don't think we got them. I notice I have them at Chicago. I have 1898 compared with 1904 right along. Chicago, Kansas City, St. Joseph, South Omaha, South St. Paul, Sioux City, and the summary.

(Statement produced by the witness was thereupon marked "Tittemore Exhibit 6" and is in words and figures following:)

754a EXHIBIT No. 6.

Receipts of Cattle and Hogs at Markets Named Below.

Chicago.

Cattle.		Hogs.	
1898.....	2,471,000 head	1898.....	8,817,000 head
1904.....	3,259,000 "	1904.....	7,239,000 "
	77,800 "		1,578,000 "
Increase	31.35%	Decrease	17.9%

Cattle and Hogs.

1898.....	11,298,000 head
1904.....	10,498,000 "
Decrease.....	800,000 " or 7.08%

Kansas City.

Cattle.		Hogs.	
1898.....	1,758,000 head	1898.....	3,673,000 head
1904.....	1,997,000 "	1904.....	2,127,000 "
Increase.....	239,000 "	Decr.....	1,546,000
	13.6%		42.12%

Cattle and Hogs.

1898.. .... 5,431,000 head
1904..... 4,124,000 "

Decrease..... 1,307,000

St. Joseph.

Cattle.		Hogs.	
1898.....	226,000 head	1898.....	1,034,000 head
1904..... ...	551,000 "	1904.....	1,657,000 "
	325,000 "		623,000 "
Increase	143.8%	Increase	60.25%

Cattle and Hogs.

1898..... 1,260,000 head
1904..... .. 2,208,000 "

948,000 "

Increase
78.08%

754*b* South Omaha.

Cattle.		Hogs.	
1898.....	812,000 head	1898.....	2,101,000 head
1904.....	944,000 "		2,300,000 "
Increase.....	132,000 "	Increase	199,000 "
	16.3%		9.47%

Cattle and Hogs.

1898..... 2,913,000 head
1904..... ..... 3,244,000 "

331,000 "

Increase
11.36%

754*c* South St. Paul.

Cattle.		Hogs.	
1898.....	173000 head	1898.....	338000 head
1904.....	352000 "	1904.....	882000 "
Inc..	179000 "	Inc.....	544000 "
Or.....	103.47%	Or	160.9%

Cattle and Hogs.

1898	511000 head
1904	1234000 "
Inc	723000 " or 141.5%

Sioux City.

Cattle.		Hogs.	
1898	301000 head	1898	474000 head
1904	327000 "	1904	1113000 "
Inc	26000 "	Inc	639000 "
Or	8.6%	Or	134.8%

Cattle and Hogs.

1898	775000 head
1904	1440000 "
Inc	665000 head or 87.1%

Summary—All Six Markets.

Cattle.		Hogs.	
1898	5,751,000 head	1898	16,437,000 head
1904	7,430,000 "	1904	15,318,000 "
Inc	1,679,000 "	Dec	1,119,000 "
Or	29.2%	Or	6.9%

Cattle and Hogs.

1898	22,188,000 head
1904	22,748,000 "
Inc	560,000 "
Or	2.52% Inc.

755 Q. You live in the extreme West. What is your opinion as to whether the existence of the packing houses that are located on the Missouri river, St. Paul and so forther, and that points inyermediate between the Missouri river and Chicago, are a benefit or injury to the country?

A. The intermediate packing houses?

Q. And those on the Missouri river.

Mr. SEVERANCE: And South St. Paul?

Mr. BAXTER: And South St. Paul?

A. Well, I believe that the diversity of industry in this country is its prosperity and I believe the more you diversify it th- more prosperity you get. I believe that the industry located at Marshalltown for instance, on our road, is of great advantage to that community. I know it is.

Q. Will you explain how? Why wouldn't it be better for all of those hogs and cattle to come to Chicago, where they would get the best market and where they could be slaughtered at the lowest price? Why isn't it better for everybody that the whole business should be centered here?

A. I don't think that it would. I think it would be better to build up the plant at Marshalltown. We want a city at Marshalltown for our road and not at Chicago. In the first place——

The COURT: You are a stand-patter?

The WITNESS: Yes, I am a stand-patter. For instance,
756 take the Marshalltown packing house plant: it employs a great number of men, it employs also, to some extent the dependent members of those families, and it gives employment to all. It sustained a good, healthy community. It is a great deal better to diversify industry and keep it in the west; in fact if I had my way and had the roads and could make the rates I would have packing houses more numerous, anyway in the Northwest than they are at present.

Mr. LYNDE: How about the shippers, the producer, in the immediate vicinity of those plants?

The WITNESS: I believe it gives him extended markets, markets for competition, gives him the option between markets and makes him money, and I believe they are uniformly of that opinion themselves.

The COURT: If the rates on meats and live stock products are too low, where do you make your money out there?

The WITNESS: I believe, your Honor, that it could be physically proven that we lose money on our live stock business, but I will qualify that by saying that w*d* are a little differently constituted than other roads, more dependent upon other roads for certain service than perhaps trunk lines. We do not make any money out of our live stock business. Our live stock business is probably eight per cent. of all. Two years ago I endeavored, by interesting one or two influential vice-presidents, to see if we couldn't get rates
757 on live stock advanced. I considered that we were losing money, at least not making money, and that is losing money—and they felt that because of the feeling in the land and the Granger legislation and all that sort of thing, that we better let well enough alone, and we left them alone. But I have been of the opinion, and I am still of the opinion, that our rates on live stock are too low for our road and that we are not making any money; so far as packing house product is concerned, take the plant at Marshalltown, 300 cars, last year, I find by telegram, were received there, and Des Moines probably not more than that, so that we are not so interested in it.

The COURT: What rates are right?

The WITNESS: The Iowa Central road, for instance, is an agricultural road exclusively, almost, and still, paradoxical as it may seem, we had 50 per cent. of our tonnage soft coal, which is mined on our road—some of the mines owned by us. We make money on

our coal, in the way we can concentrate it in cars and in trains; that is we can get the maximum load and the maximum train, because we can govern all equasion to a certainly. With grain it is the same way. A carload of corn for instance, in northwestern Iowa, on our Algona line, where the rate is 15 cents and where the equipment will handle 30 tons, we have a large percentage of our equipment 40 ton cars; we have orders out that those cars
758 must load 10 per cent. more, or 88,000 cars, and we have an inspector who goes to each billing agent after I look over the abstracts each month, and we are very careful to see that the man does not commit the error of under-loading twice on those cars. Take an 88,000 car at 15 cents a hundred—or if you will, get down to Marshalltown, where the rate is 12; you can see what we can get out of the grain business, and the grain business is about 20 per cent. of all our business. We are not what you call a high-class freight carrying road. The M. & St. L. is somewhat differently located, but its business is less live stock and more wheat, that pays an excessive or large recompense.

Q. State what effect, if any, the reduction of rates on cattle and hogs at intermediate points east of the Missouri river would have upon rates of cattle and hogs west of that river?

A. Mr. Counsel, that is a difficult question to answer but I must answer it in this way: if we reduce rates on live stock from the 23½ cent zone to Chicago, I believe that the present relation of the live stock rates to all other markets is about as fair as human judgment and wisdom and experience could fix; I believe that that rate, if reduced, that it will reduce the rates, to a certain extent—I am not prepared to say proportionately, but to a certain extent every
759 other live stock market, recognized market, and I believe to that it will reduce the rates, the state rates. I don't believe that we can make that reduction without bringing on an agitation, and a reduction in our live stock rates in all of the states that we traverse, unless possibly Illinois. I don't know about that. I believe that on the business originating on our line—I have figured for our executive department that we would lose somewhere in the neighborhood of $90,000; that is gross; that would take the car to its destination, wherever it was. That would include other roads' proportion of earnings. Now, we handled approximately 30,000 cars of live stock on the two roads last year, and that is only figuring $3.00 per car, whereas in our 23½ zone, where we get most of our business, it would be $7.00 per car. I have simply averaged that up, in my judgment, and I have given that as my opinion to our executive officers.

Q. What switching charges are paid by your company on packing house products and fresh meats at the Missouri river points?

A. We don't handle any business out of Missouri river points. It seems to me, out of South St. Paul, the rate is $2.75, or $3.25. I think I can refresh my memory. On shipments of cattle and hogs arriving at St. Paul by the M. & St. L. road for de-
760 livery to South St. Paul stock yards, a switching charge of $2.75 is assessed; on shipments of packing house products

and fresh meats handled from St. Paul by the M. & St. L., say to Chicago, we would pay a charge of $3.25.

Q. Are the same terminal and switching charges paid by your company on cattle and hogs coming from the West of the Missouri river to St. Paul or any other Missouri points?

A. Well, we don't handle any of that traffic, but I suppose if we brought in a car there, we would pay that terminal the same as on any other live stock.

Q. You don't participate in carrying live stock to points west of the river?

A. No, not to any extent.

Recess until 2 o'clock P. M.

761 SEPTEMBER 22, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon J. N. TITTEMOR, resumed the stand for cross-examination by Mr. Cowan:

Q. Not having a geographical knowledge of the location of your railroad, I will ask you to state in a general way the principal termini and division points of your road, first stating what is your north and south termini of your main line?

A. Minneapolis and St. Louis. The road begins at St. Paul, Minneapolis and runs south to Albert Lee Minnesota. There it connects with the Iowa Central it is the northern terminus of the Iowa Central and then to Peoria, Illinois.

Q. Via what principal towns in Iowa?

A. Well, via *the way of* Hampton, Eldora, Marshalltown, Grinnell, Oscaloosa, then through Monmouth, Illinois to Peoria.

Q. Where does it cross the Mississippi?

A. At Kethsburg, Illinois. That is the main line, however.

Q. What amount of branch lines have you?

762 A. Well, the Iowa Central has a branch line from New Sharon to Newton of thirty miles. *mFro* Marshalltown to Story City, about 25 miles, Hampton to Algona, 37 miles. Newburg to State Center, 12 miles, Grinnell Branch, about 12 miles, then the M. & St. L. has a line running to Watertown, Minnesota, and a line running from Albert Lee to Angus and a lone running from Spencer, Iowa to Des Moines, and a line running from Winthrop to Storm Lake.

Q. Your furthest point south in Iowa is at your Mississippi river crossing?

A. Yes s-r, West Keithsburg.

Q. What main line of east and west railroads o-erating between the Missouri river and the Mississipi river crossing, does your road cross north and south?

A. Well, we will take the Iowa Central lines; we cross the Chicago, Milwaukee & St. Paul at Mason City and at Pickering. We cross the Northwestern at about Mason City, at Clifford and at Mar-

shalltown. The Rock Island at Abbott and Grinnell and Brighton. The Burlington at Maxin and Monmouth, Illinois. We are interlaced with the Burlington road for a great many miles and also with the Milwaukee road. We cross the Milwaukee at Richmond. We cross east and west lines at about an average of every seven or eight miles.

Q. And the Great Western, of course, you cross that also?

A. The Great Western, we cross that two or three times.

Q. All of the live stock which originates on your line
763 and goes to Chicago moves from one of these junctions over the lines of those other roads?

A. Yes, Chicago business of course, yes sir.

Q. And all of the live stock which you receive between these main lines of road are tributary to the stations at your junction point on the main line of these other roads?

A. Not far away, yes sir.

Q. Previous to the time you constructed, those roads were there?

A. I did not understand you.

Q. Previous to the building of your road, those others were there?

A. Well, our road in some sections is older than any of them.

Q. How long has your's been built?

A. Oh, the Iowa Central road, some parts of it, is thirty odd years old, pretty near as old as the Northwestern road through Central Iowa.

Q. Have you built any additional part of your main lines that you have described within the last ten years?

A. Not on the Iowa Central. We would consider the line from Winthrop to Storm Lake on the M. & St. L. as a new main line between those points.

Q. Does that cross those main lines?

A. No, it does cross the lines, but it does not lie within the compass of this traffic.

Q. That is not important to this purpose?

A. No sir.

764 Q. So far as the purposes of this case are concerned, your line,—None of it has been built within the last ten or twelve years?

A. No.

Q. Is it not a fact that from the situation which exists you must accept the traffic at the rates which the other roads are pleased to publish to Chicago?

A. Competition fixes the rates; we must accept or build into Chicago.

Q. And the latter you don't prefer to do?

A. I won't say that I would not prefer to do it, but we have not been able to get our stockholders to put up the money to do it.

Q. And if you built into Chicago it would be the same situation you still would have to accept the rates that others were making?

A. Yes sir.

Q. You don't reach the Missouri river and Chicago, and that

being the case, I will ask you if it is not a fact that it has not been by virtue of the will of your railroad that the particular relation of the rates between dressed meat and packing house products on the one part and the live stock on the other part has been established?

A. You are right, we have had no voice and could not have any voice in the fixing of the rates as they stand at the present time.

Q. The rates which are published therefore, may not be taken as a reflection of the judgment of your road with respect to
765 what the relation ought to be?

A. You are quite right.

Q. Have you an opinion now from your experience as to what that relation ought to be or not?

A. Well, I have an opinion, of course. I must have an opinion. I believe that the packing house product rate is too low. I believe the live stock rate is too low on our railroads. I believe that the packing house product ought to be, if it could be, advanced.

The COURT:

Q. What about the relative rates?

A. The relations of rates there, your Honor, is fixed so arbitrarily that I don't know just what to say. I am of the opinion, based upon my experience, based upon the conditions surrounding these rates in the locality from which we solicit business, that the rates on live stock are just as low as we can possibly make them and make any money and that the rates on the packing house product should be higher in order to make the same. It is difficult for me to tell the relation of the rates.

Mr. COWAN:

Q. You have nothing to do with establishing them one way or the other. You accept what the others make?

A. Oh, sometimes we are consulted about it, but we don't make the rates. We don't make those rates, and we don't make any rates. We could not change the rates, for instance, Mr. Counsel, if we wanted to.

766 Q. Now, in determining what the profit is in the transaction of transporting rate, you cannot resort to the rate alone, can you?

A. Not always.

Q. You must have regard to the circumstances under which the service is performed?

A. A great many conditions and the service and competition.

Q. Is it not a fact that all of the live stock which originates on your road pays you a greater proportion of revenue out of the through rate to Chicago than you would receive were it divided on the mileage basis?

A. I would like to answer that question by asking counsel whether or not that is not a question of internal domestic relations between us and our neighbors?

Q. I am not going to ask you for the purpose of this case just what your divisions are.

A. Ordinarily the short line gets somewhat more than it would receive if it were a participant in the entire haul. For instance our line for a 100 mile haul to a junction from which the other road would carry the stuff to Chicago, 350 miles, ordinarily we should have more according to our system of figuring rates than the main mine, for instance would have.

Q. That is practically the universal rule, that the originating road takes a larger division than the mileage basis unless it belongs to the same system.

A. Ordinarily that is the system.

767 Q. Is that not because it is considered that in originating any traffic there is an unusual expense that is incident to originating the traffic, that the road does not have which takes it at the junction point?

A. That is true. There is the unusual expense and the item of solicitation. In other words we pick up the traffic and concentrate it and give it to the other fellow in wholesale lots. We are the retail dealers, we handle it in a retail way.

Q. If you care to state, you can do so, but I will not ask you to unless you care to,—what the amount of your divisions are?

A. I would prefer not because there is a great deal of competition, a great many competitors for the business, and it would be giving publicity to a fact that I would rather not state.

Q. Is it not a fact that you run a train on each one of these branches alone every day and must do so whether you have the traffic or not?

A. That is true, Mr. Counsel but I have never in all my life, and I have been on small roads and branch lines, they have kept me shelved there for twenty years, I have never known those trains to be so scheduled that we could handle any live stock on them or handle the empties out. The theory of your local train on a branch is ordi-

768 narily to bring from your western end into your terminal your freight very early in the morning and go out in the afternoon.

Now live stock wants to get in just the opposite way so that on our branch lines we have not been able to handle our stock on our regular trains and we have, as I say to use a switch engine or a special engine to go out after the stock and bring it back and where we could we have tried to prevail on the shipper to use certain days, say Tuesday and Wednesday, two days in the week so as to concentrate it in that way and in that case we have invariably handled very much less than train loads of freight.

Q. You don't certainly mean that you cannot distribute empty cars?

A. Yes, we can, but let me tell you that as long as we are using an engine out we might as well not labor up the local train. The local train on the branch is scheduled as much for the accommodation of passengers as anything else. We usually put on our road, on our local trains a caboose or an old coach to accommodate the passengers and traveling men who want to make as much time as possible during the day and we try to put our live stock on special trains and handle the empties with the engine that brings the stock back.

Q. Is it not a fact that on your line of road the trains which carry the live stock have more loaded cars per train into and out of any division point than a train in which live stock is not carried?

769 A. It would be exactly the reverse on our road and that is a fact.

Q. What are some of the principal division points on your road through which your road passes?

A. Marshalltown, for instance.

Q. Where are the live stock brought from to Marshalltown?

A. Well, you take the line from Mason City to Marshalltown, including the branches that might come out to the main line either by way of Marshalltown or Pickering, just below the junction point. From south of there the freight would come up from Pickering and go out by the Milwaukee, perhaps or on the Marshalltown Branch and out. Then from the territory south of Marshalltown where the business works by Pickering, it also works clear by Monmouth, a much longer haul. We are sandwiched in there so that it is pretty hard to tell how the business does work even to the man in charge but those are the three principal points. Then on the M. & St. L. you have Livermore and Fort Dodge.

Q. How many trains of live stock do you handle which come to Chicago, do you know?

A. I cannot tell exactly. I should say that 65 per cent. of our business would come to Chicago and I think our business last year was about 28,000 or 29,000 cars on the two roads.

Q. That would be from 18,000 to 20,000 cars of live stock which you originate, comes to Chicago?

770 A. That seems large, Mr. Counsel, but I just pass my judgment on it. I could not tell exactly. I don't know but I better say that I don't know.

Q. At how many different junction points do you deliver this live stock to your connections which reach Chicago?

A. May I give the number without the names?

Q. Yes.

A. I should say about a dozen.

Q. What?

A. About 12 on the two roads.

Q. Is it pretty equally divided?

A. No.

Q. Through what principal junction point does your traffic move to Chicago?

A. I should think that the traffic moves via Marshalltown and Pickering, more traffic than at other junctions and at Monmouth, those three.

Q. Will you make a statement from your train conductor's books showing the consists of trains coming into those points for the first fifteen days, say in April and October and furnish it to us?

A. That is fifteen days of April?

Q. Yes, and October, the consists of all the trains, noting in which there are live stock and those in which there are not.

A. Well, it is the consists of all freight trains.

Q. Yes. I don't mean that you should give the consists of every car, but I want the live stock noted and the other loads of dead freight and the empties.

771 A. Yes, I see.

Mr. SEVERANCE: You don't mean over the whole system?

Mr. COWAN: Only those three points that you have named. When you mention the revenue per ton per mile in answer to Judge Baxter, or his question was the rate per ton per mile, did you mean that you had a rate based upon the earnings per ton per mile?

A. The rate per ton per mile in my judgment—I don't know that I said much about it. It is rather a relic of barbaric ages. It don't represent anything.

Q. It is the result obtained by dividing the total revenue by the total ton miles.

A. I think that is it.

Q. And not by dividing the rate by the ton mile?

A. I think that is the way they get at it.

Q. Have you an estimate—If you should estimate the rate on live stock at 23½ cents from some of your stations to Chicago, you divide that by the tonnage to ascertain—the mileage—to ascertain what that would produce as a revenue per ton per mile,—it would not represent what you would receive nor what the other road actually receives of it, would it?

A. I don't know that I understand that question.

Q. You take a station, A where the rate is 23½ cents to Chicago and that station being on your line.

A. Yes sir.

772 Q. The junction point B with the Illinois Central, and say that it is 300 miles from B. to Chicago?

A. Yes sir.

Q. The amount that a carload would have to pay on the 23½ cent rate divided by the tons in the car and the mileage would give what we call the per ton mile basis?

A. Yes sir.

Q. And that would not represent the amount you received per mile nor the amount the Illinois Central would receive per mile in actual revenue?

A. No, I think I see your idea.

Q. It does not do that because you get a greater division, being the originating line?

A. Yes sir.

Q. And so it runs through all the traffic largely?

A. Very largely, where a line is picking up the traffic and giving it to some other line. The train tonnage is the unit to figure from.

Q. Take the total tonnage of your road and the total revenue and divide it by the total miles and tons, what does it show on your system? In other words, what is your average revenue per ton per mile?

A. Last year, I think, sixty four hundredths of a cent per ton per mile. I don't think that is representative of anything. I don't think it should be in any annual report.

773 Q. What was your average earnings per car mile?
A. Do you mean by that per train mile?
Q. No, per car mile.
A. I don't know. I don't think we keep any such statistics. We keep the per ton mile and the per train mile.
Q. What was it per train mile?
A. I think only $1.25.
Q. How many loaded cars per train mile?
A. I don't remember.
Q. Your annual report shows those statistics, does it not?
A. I think so, yes sir.
Q. Have you the printed report?
A. Not with me.
Q. Can you furnish me one?
A. I would be very glad to.
Q. That will save a good many questions if you would.
A. I would be very glad to.
Q. What was the total amount you paid in damage claims to live stock?
A. I stated, I think on the direct question being asked of me, that I did not have those statistics compiled because I could not get them. We have our vouchers, as they are made, they are for loss and damage an- so state, and they are filed away under our system. I did state that it is my belief that the damage claims on our road to
774 live stock on the two roads is more than on all other freight together. That seems extraordinary, but I believe that that is a fact on our road.
Q. Well, do you know the amount—Do you mean the amount that is paid or the amount that is claimed?
A. The amount paid out for delays to trains and damage of all classes, damages incident to the traffic.
Q. Well, you must have some approximate idea of what it is in dollar and cents?
A. Well, I want to tell you that I have not, I have not. I won't try to say. I would rather verify my figures and prove what I have stated. I think that the actual accounts will show that if I can get at them.
Q. You made the statement with reference to the minimum weights on hogs. I understood from your reading that you count the minimum of a 36-foot car at 16,000 pounds?
A. No, I think you misunderstood me.
Q. You have the minimum the same as the other roads use?
A. Yes sir, 17,000 I think.
Q. You probably were giving the minimums on some smaller car?
A. Yes sir, I think so.
Q. 36-foot cars are practically the only cars in use?
A. I called them in my examination, "the popular car." That is the car that is used the most.
Q. You gave several rates in the classes, one for example you gave

as Class A, or Class 1, or first class. Were the rates which you gave in your exhibits carload or less than carload?

775 A. Well, there was two or three classes that were less than carload but as a general proposition they were carload rates. I submitted two exhibits with rates, one entirely with carload rates and the other with carload and less than carload. I think there were a few that would be in the fourth class in the first exhibit, it would be less than carload. The balance were carload rates.

Q. The rates which you are made to apply to various articles of commerce are not made with a view that the one shall pay the same profit as another, are they?

A. I think not, so far as my experience goes, they are not.

Q. It would be impossible to do so, would it not?

A. I should think so. A store-keeper could scarcely—or any other class of business—could scarcely make a chop-off rate for the same profit on each article.

Q. Commercial conditions will not permit that to be done, will they?

A. I don't think so, they never have.

Q. The desire of a particular railroad to build up a particular traffic would prevent that being done by any competitor wouldn't it?

A. Yes sir. They would have the pivot and the one that the competitor can make is the rate that must be charged. They are a public carrier, they cannot go out of business and say they will charge five cents per hundred pounds more than a competitor.

776 Q. The lower rate stimulates traffic, does it not?

A. Not always.

Q. Well, that is the tendency?

A. That is the inclination of the rates are properly adjusted to the traffic that is to be moved. Sometimes a low rate might not have that effect.

Q. Competition tends to lower the rates, does it not?

A. Competition tends to lower rates.

Q. Is there a standard of reasonableness?

A. Why a reasonable rate is as intangible a property in the question of making rates, to a traffic man as the coloring is to a flower, for instance. I cannot tell. I have been twenty years at it and I cannot tell. The competition fixes the rate for me and has for years. I simply say to the boys when they come to me and say "Can we do this or that," I say "What is the rate from that point to Chicago via their line?" "Well," it is so and so. Well, we cannot get more and the result being that we have to take the traffic there at the figure the other fellow fixes for us.

Q. Is there a standard of relative reasonableness as between the different commodities?

A. What is that?

Q. Is there a standard of relative reasonableness as between the different commodities?

A. There is no standard that I know of except common
777 sense and the question of reasonable compensation for the services performed and those conditions that go to make up a rate.

Q. You look out for your rate with a view to do the best for your business under all the circumstances?

A. I look to make the best for my stockholders that I can. At the same time I must have regard to the upbuilding of the country.

Q. Why?

A. Well, because I want to produce freight. I want to produce passengers in and out as well as freight in and out.

Q. And that is the same motive then, it is either present or future gain which regulates the matter of what the rates shall be?

A. Well, my primary object has been to get the rates, get money for my stockholders and I haven't very well succeeded. The other fellow has fixed my rates.

Q. Doing precisely the same thing?

A. I don't know.

Q. Trying to get money for his stockholders?

A. I imagine so.

Q. Now in the custom that has thus grown up, from making rates for revenue, has that developed a standard of reasonableness actual or relative?

A. Oh that is a might- hard question. It would be by reasoning and common sense and the knowledge of the situation and
778 the conditions, the building up of the country and all that goes in. The cubic contents of the car, what the car holds. Mr. Cowan, sometimes a man in making rates will take into consideration the question of the r-sistance of the train. For instance it is demonstratable, I think that across the State of Iowa on certain days that the resistance to a stock train is more than the resistance to the same number of box cars. You take a windy day and it will cost you more. Well, those elements go in, all of them, but they are not final. They all go in and you have to reason it out. But after you have taled it out and reasoned it out the measure of the rates is what the other fellow has fixed.

Q. Is it possible to fix rates with a view to arriving at a certain profit?

A. By experience and by that only a man may be able to pretty nearly govern all his rates if he owns certain territory, in making the rates he might make a certain amount of profit, but as they are fixed at the present time, that is not true.

Q. Can you tell what the relation of the cost of the service is in carrying a carload of third class goods or freight,—that is sometimes shipped by carload, are they not?

A. No, that is never shipped in carloads, fifth class is.

Q. Fifth class, shipped by carloads and class B and C, you could not tell what was the difference in cost of handling it?

779 A. No, because that — not be hardly a fair example. For instance Class B. We would not fill up a train four trains a year on our road and never would be—well, the fifth class we

might have a train but the vital point is that you must consider what you can make of the prevailing or predominant traffic on your road.

Q. Isn't it always the rule with railroads that the lower rate should be given to the predominant traffic than to the traffic that moves seldom?

A. Well, if you are getting a million tons of one class and 100,000 of another, I have no doubt that the lower rate would be given to that freight because it would be more profitable. You can concentrate a great number of tons in your cars and trains.

780 Mr. LYND:

Q. The lower rate would be given to the millions tons?

A. Yes sir, that is what I say. You can move it with greater facility in the first place, and you can manipulate it better.

The COURT:

Q. Which do you call the predominant traffic on your road?

A. Soft coal and corn.

Q. What about live stock?

A. Live stock is about 8 per cent. of all, or ten per cent. If we were to have as much live stock as we have soft coal to handle, and had to handle it in the same way, we are obliged to handle it, we would be bankrupt.

Q. Isn't the live stock the predominent traffic on the roads that make the rate on it?

A. I should say no. I should say it is not 10 per cent. I do not think it is 10 per cent. It is the fashionable traffic, if you will, it is a fad.

Mr. COWAN:

Q. What other traffic except the corn and coal furnishes as large a volume as the live stock on your road?

A. Well, the lumber products. The live stock will be about third or fourth, I think. That will be shown in our annual report that you will receive. That is all fixed there.

781 Q. Do you move live stock long distances on your road?

A. Well, we move live stock distances of 160 miles and 200 miles.

Q. Through what division points?

A. That would be via Monmouth.

Q. That will be reflected in the statement that you will make, that I have requested?

A. Yes sir.

Q. At what rate do you haul hogs from Southern Minnesota points to Chicago, and from what points?

A. That would be ha-d to answer because I do not carry the specific rates in my head, but we handle business from New Ulm, Wasetka, Lafayette and Winthrop, but I cannot tell you the rates. They begin at about the Minnesota State line—first, the rates get to the Missouri River zone and then they gradually grade up until you get into Minnesota, and then you get into the 24 and 25 cent rate.

Q. In connection with the annual report that you submit and hand to us, will you hand us one of the individual issues, of the tariff between points on your line and such joint tariffs that reach points like Minneapolis and Chicago. You probably have them printed, have you not?

A. Printed tariffs?

Q. Yes.

A. Yes sir.

Q. And also give us a map of your line.

A. There is a map in the report. What are the tariffs you want?

782 Q. Your live stock tariff, individual and joint.

A. To Chicago?

Q. Well, you have it all printed——

A. Our tariffs are in exhibits here. Our Iowa rates are right together with the Minnesota rates.

Q. Is it not a fact that the Iowa Commission in its distance tariffs fixes a higher rate on packing house products or dressed meat than on live stock?

A. I am not certain about that. We have very little experience with those rates in Iowa.

Q. Was your road consulted in regard to the matter of reducing the packing products, or the dressed beef rates?

A. No, we simply followed suit.

Mr. COWAN: That is all.

Redirect examination by Mr. BAXTER:

Q. You were asked on cross examination something in reference to the average rates, or average receipts per ton per mile. I understood you to say that that calculation was of no value.

A. Well, in connection with certain computations that the counsel was bringing out there, I thought it was of no value. I think the train earnings, I thought they were of more value. It is of

783 more value to a certain extent, I must admit.

Q. What I want to get from you is, how do you ascertain the average receipts per ton per mile?

A. The mileage and the tonnage. You take a ton so many miles and divide it and it will give you the rate per ton per mile. It gives you the average, but what I had in mind, was this; that the train, the revenue per train mile to our road is the primary unit from which we figure, and I can get twice as much money or three times as much money out of the corn or coal per train mile than I can on live stock.

Q. For the purpose of the record, in ascertaining the average receipts per ton mile, do you keep account of the number of miles?

A. Yes sir.

Q. That each ton is carried over your road?

A. Yes sir. The figure I gave as our computation, was about 64/100. as an average.

Q. Having ascertained the number of miles that each ton is car-

ried over your road, the aggregate of that makes your gross tons per mile, doesn't it?

A. Yes sir.

Q. Then you divide that into your total freight revenue and that shows you the average amount received per ton per mile, is that correct?

A. Yes sir, that is correct.

784 Q. Now, coming to the average receipts per train mile. Do you keep account of every mile that is made on your road by every train?

A. Yes sir.

Q. And the total of that makes your aggregate train miles?

A. Yes sir.

Q. Divide that into your aggregate freight revenue, and that gives you your average receipts per train mile, is that so?

A. Yes sir.

Q. In making up that account, do you call an engine and a caboose a train, if it runs out without any cars attached to it?

A. I think not, but I am not certain, I would not say.

Recross-examination by Mr. COWAN:

Q. You said that you take the train mile and consider that a unit in your estimate of revenue?

A. That is what I use myself.

Q. Why?

A. Well, because of the density of traffic and from that comes the profit in the trains.

Q. Does it matter very much as to the expense of running a train whether it is a heavy train or a light one?

A. Whether it is what?

Q. Whether it is a heavy one or a light one?

A. I think it does, but not in proportion. For instance,

785 take a train of twenty cars loaded with corn and run it from Marshalltown to Monmouth, and then take a train with twenty carloads of stock, and you will see how you are going to get out.

Q. The question of handling——

A. Well, the relative expense—the net is what we are after. The net in the case of corn is fully three times as much as it would be on the live stock.

Q. Isn't it a fact that your heavy equipment and heavy loading of the cars in the case of the corn necessitates a much greater wear on your equipment and track and a greater amount of fuel than if your cars are loaded light and your train loaded light?

A. Some four or five years aggo when I happened to be General Manager of the road, I sent the Road Master out to hide in the bushes and catch the boys that were running fast, and I guarantee you that the way they fanned the live stock trains through the country would justify me in saying that it cost more to handle 40 per cent. of the tonnage than it does 60 per cent. of the other class of traffic where you run them slower. The question of fuel is a thing that you have got to consider.

Q. Answer me then why it does not cost the Lake Shore and the Pennsylvanie, and the B. & O. and these other roads that run
786 the fast trains, why it does not cost them more to haul the traffic than it does these Western roads that run the slow trains?

A. If you had the double track, and one fourth of one per cent. grades, and everything fixed for it, the proper type of locomotives and all other conditions favorable and through and full trains, that is a different proposition altogether. We don't have that out West and I can only cconjecture as to the conditions on the Pennsylvania or the New York Central.

Mr. CLARK: By consent of counsel, I desire to examine one witness on behalf of T. M. St. Clair Company, Limited. Perhaps it would be proper to ask that special order be entered permitting me to appear for that intervenor. I am not a member of the Bar of this Court, and in all other cases here several times heretofore such orders have been entered in each particular case.

The COURT: Well, let the order go.

Testimony Introduced on Behalf of T. M. St. Clair Company.

E. T. KOCH, called and sworn as a witness on behalf of T. M. St. Clair & Company, testified as follows:

Direct examination by Mr. CLARK:

Q. How old are you?

A. I was born in 1848.

787 Q. What is your business?

A. I am Traffic Manager for T. M. St. Clair & Company, Limited, of Cedar Rapids, Iowa.

Q. How long have you filled that position?

A. With the present corporation?

Q. With the Pres-nt Corporation?

A. About five years.

Q. What is the name of the corporation?

A. T. M. St. Clair & Company, Limited.

Q. In what business is that corporation engaged?

A. Packing of hogs and cattle and beef products and hog product.

Q. Which principally?

A. Hogs.

Q. Do you know how long it has been since that corporation was organized?

A. T. M. St. Clair & Company, Limited?

Q. Yes.

A. 1899.

Q. Do you know whether they were the successors of a former corporation engaged in the same business?

A. They are.

Q. What was the name of the former corporation?

A. T. M. St. Clair & Company.

Q. How long to your knowledge was that corporation engaged in business, in the same business?

A. I don't know when the corporation of T. M. St. Clair & Company was formed, but I went into the service of the company
788 in 1890. The corporation was formed some years after that.

Q. That is the present corporation?

A. Yes sir. The previous corporation was formed some years before 1890.

Q. Was your service for the former corporation of the same character as your present service for the inte-venor?

A. Yes sir, and it has been continuous since 1890.

Q. Do you know about what the average killing of hogs per day is by T. M. St. Clair & Company, Limited?

A. It varies somewhat with the supply of hogs. It will average in the neighborhood of 600,000 hogs per annum.

Q. When is the highest average of slaughtering per day?

A. During the winter months.

Q. And when is the smallest number?

A. During the summer months.

Q. You say the aggregate is about 400,000 per annum?

A. About that.

Q. How long has that been so?

A. The business has gradually increased since the old firm went out.

Mr. COWAN: I cannot hear you.

A. (continued). The old firm went along at a killing proportion of somewaht less than that. This new firm have not averaged 600,000 hogs since their advent in 1899. They are killing about that now. For the last past year, it will average about that.

789 Mr. CLARK:

Q. Do you know how expensive the plant is, what the investment is in the plant?

A. There has been expended in the last past five years about $500,000 in the way of improvements and betterments. The plant represents in the neighborhood of a million of money.

Q. That is in the plant itself?

A. Yes sir.

Q. Outside of the capital used in the carrying on of the business, tied up in the business?

A. Yes. It has nothing to do with the operation of the firm at all.

Q. Do you know where that corporation purchases hogs for slaughter?

A. Largely in the State of Iowa.

Q. Does it purchase any from points other than in the State of Iowa?

A. It does.

Q. Whereabouts except in the State of Iowa?

A. During the period extending over the last five years it has been quite varied, depending on the supply of hogs in the State

of Iowa. They have been at times compelled to go into the State of Minnesota, Dakota and sometimes Kansas City and Sioux City, St. Joe and Omaha.

Q. Sioux City is within the State of Iowa, is it not?

A. Yes sir.

Q. How extensively have the purchases been made at Kansas City and St. Joseph?

A. That varies in this way, that it depends largely upon the demand for any special character of meat, that and the demand
790 for the particular kind of hogs used. At the time when hogs are varying so, there are seasons of the year when they vary very much in the country, and at such times as that a certain character of hog, weighing, we will say, from 175 to 200 pounds, or 225 pounds, must be uniform, and then they frequently go to the markets at Kansas City or Sioux City and they have bought hogs in Chicago.

Q. And some in St. Joseph?

A. Yes sir.

Q. St. Joseph, Missouri?

A. Yes sir, but not many.

Q. Any at Chillicothe or in that vicinity?

A. Yes sir, from Chillicothe, and south from Kansas City but not many.

Q. Well, now, Mr. Koch, where does the corporation purchase its principal supply of hogs for slaughtering?

A. In the State of Iowa.

Q. I will ask*m* you whether the purchases outside of Iowa are exceptional or the average?

A. Exceptional.

Q. During the past year have purchases been made in Minnesota or the Dakotas, either of them?

A. Not of any consequence.

Q. Do you have charge of the freight and tonnage of the live animals which are brought into the plant for slaughtering?

A. The shipper.

Q. How?

A. The shipper of the live stock designates the route it is coming.

791 Q. Take the State of Iowa, do you know the rates of freight from the various points in that State where purchases are made to the packing house at Cedar Rapids?

A. They are controlled by the Iowa Distance Tariff. Those rates are promulgated by the Iowa Commission.

Q. Do you know what those rates are?

A. No, not in detail, each and every one.

Q. At about how many points are purchases made in Iowa?

A. I have known purchases to have been made by wire from our office, covering anywhere from 80 to 85 points in one day. That is during the heavy killing season in the winter months.

Q. Well, take the year altogether, at how much different points does the corporation purchase hogs in Iowa for slaughtering?

A. Daily?
Q. Throughout the entire year?
A. It would be impossible for me to make an estimate on that.
Q. It is a matter you are familiar with is it not?
A. They buy along the line of the Chicago, Rock-Island & Pacific, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul and the Illinois Central lines; from the extreme western limit of the State up to and including our own county and to the extent of one county east.
Q. That is east from Cedar Rapids?
A. Cedar Rapids, yes.
Q. How far is Cedar Rapids west of the Mississippi River?
792 A. About 80 miles.
Q. Eighty miles from Clinton?
A. Yes sir.
Q. By the Northwestern?
A. Yes sir.
Q. Have you made a careful study and examination and computation of the freight rates in the Iowa Distance Tariff from the points in Iowa where the corporation purchases its hogs into Cedar Rapids and into the slaughtering house?
A. Yes sir, for many years.
Q. Do you know from that examination and study what the average freight rate on the live animal is from the point of purchase until the delivery at the slaughtering house in Cedar Rapids?
A. Of Iowa shipments?
Q. Of Iowa shipments purely?
A. Eleven cents.
Q. What is the present rate on the finished product of the packing house to Chicago, local?
A. 13½ cents.
Q. Now, can you tell Mr. Koch, what the rate is on the live animals purchased at St. Joe, Missouri to the packing houses?
A. At Cedar Rapids?
Q. Yes.
A. 18½ cents.
Q. How much is it from Kansas City?
A. 15 cents.
Q. How much from Chillicothe, or that vicinity when you purchase there?
A. 15 cents.
Q. In all cases then it is greater than the average rate
793 on hogs purchased in Iowa?
A. Yes sir.
Q. How long ago did you begin the study and examination to determine what the average rates were on hogs purchased in Iowa?
A. Fifteen years ago.
Q. Have you become familiar with that matter?
A. As nearly so as I was able.
Q. I take it that you have made written computations perhaps?
A. We have records yes sir, that show.

Q. Did you bring any of those with you?

A. I have not, no.

Q. When did you last make a careful computation of that character.

A. About eight months ago, it covered a period of five years, the year 1900, 1901, 1902, 1903 and 1904, and I find the average of eleven cents on Iowa hog shipments to Cedar Rapids, during that period.

Q. How far east of Cedar Rapids does that corporation purchase hogs in Iowa?

A. Not beyond the first tier of counties.

Q. Not beyond the first tier?

A. Yes sir.

Q. East of Cedar Rapids?

A. Yes sir.

Q. Do you know what the rate is on the live hog from the first tier of counties in Iowa along the Mississippi River into Chicago?

A. Fifteen cents.

Q. Can you tell what it is in the second tier of counties?

A. The rate from Lynn County to Cedar Rapids is 18½ and the rate is scaled up from 15½ proportional to Cedar Rapids,
794 on the basis of 18½.

Q. As you go West?

A. Yes sir.

Q. That is to Chicago?

A. Yes sir.

Q. Now Mr. Koch, what is the rate on the live hog from the tier of counties along the Mississippi River to Cedar Rapids?

A. About 10½ cents if my recollection serves me correctly. 10.48.

Q. What is it from interior points between Clinton and Cedar Rapids?

A. Well, it varies. I am unable to give you the Iowa Distance Tariff in detail per mile.

Q. From Clinton to Cedar Rapids?

A. To Cedar Rapids, a distance of 81 miles, it figures, 10.48, if I remember correctly, something over ten cents. The distance is a little over 80 miles.

Q. In view of the rates that you have tabulated, are you able to make purchases for the St. Clair Packing House at Cedar Rapids in the counties more than one tier east of Cedar Rapids? Are you able to make purchases and ship the hogs west and then ship back and deliver the finished product at living prices?

A. We receive no hogs from east of the first tier of counties. The rates are prohibitory.

The COURT:

Q. The rates are prohibitive, is that it?

A. Yes sir. The local rate back to Cedar Rapids plus the finished product rate to Chicago, would give the Chicago packers the
795 advantage of us in the neighborhood of—well, from Clinton, if you please, it would be 10½ or 10.48 and Cedar Rapids

plus the Chicago rate as against the other 15 cent rate, 15 cents from Clinton to Chicago.

The COURT:

Q. On the live stock?

A. Yes sir, and the total round trip rate via Cedar Rapids would be 24 cents.

Mr. CLARK:

Q. Now do you know what effect those conditions have upon the shipment of live animals from the two eastern tiers of counties in Iowa?

A. There is only one outlet that I know of for those hogs.

Q. Where is that?

A. Chicago.

Q. Have you made a study of the total annual hog crop of Iowa?

A. The best information obtainable that I have access to, leads me to believe that it is approximately ten million per annum under favorable conditions.

Q. Do you know about how many—about what proportion the entire annual crop, of the entire annual crop is slaughtered in the State of Iowa?

A. My opinion is that it is approximately a million and a half.

The COURT:

Q. Hogs or dollars worth?

A. A million and a half hogs.

796 Mr. CLARK:

Q. Does that include the plant at Sioux City, I believe it does?

A. No sir, I did not intend to convey that idea. We consider Sioux City as a Missouri River proposition.

Q. Now, take the tier of counties along the Missouri River which way are the hogs in those counties shipped for slaughter?

A. Largely to the Missouri River Packing points, St. Joseph, South Omaha, and Sioux City.

Q. When you get west of that tier, which way do the hogs go?

A. You mean east?

Q. East?

A. They go to the interior packer in Iowa and to Chicago. My estimate would be that from the western tier of counties, that the Missouri River packers at South Omaha, Sioux City and St. Joe would attract from Western Iowa probably in the neighborhood of one million hogs per annum.

Q. Well, from your experience and observation do you know how the annual output of hogs is distributed through Iowa, that is is it distributed pretty equally or are there portions where the hog population is more dense than other portions.

A. There are some sections of Iowa where they have what is termed the two-litter, in the southern portion of the State. 75 per

cent. of the northern portion of Iowa, I would think that the
797 percentage of hogs was materially less than prevails in the remaining southern 25 per cent.

Q. Have you made a study, taking these conditions into consideration to determine what the average freight on the live hogs shipped to Chicago is from the point of shipment to the City of Chicago, that is the Iowa animal?

A. Yes, I have for a great many years.

Q. How much is that in your judgment?

A. I am better qualified I believe to state that covering the territory embracing the northern 75 per cent. of the State than the southern remaining 25 per cent., but I would say that the average was liberal at 21 cents. I actually believe that if it was figured out to a nicety, an exact figure, that it would prove to be nearer 20 than 21 for various reasons.

Q. It is a fact that the two eastern—does the fact that the two eastern tiers of counties in the State ship almost exclusively to Chicago, tend to increase or cheapen the average rate?

A. Cheapen it, naturally.

Q. From that portion it is less?

A. The rate there is less.

Q. How is the proportion of hogs in those two tiers of counties?

A. About the same. I think there is very little variation between the Mississippi and the Missouri River.

Q. Do you remember how many counties there are in Iowa
798 altogether?

A. Something less than a hundred. Not many. 96 or 98 I think.

Q. How do the counties run north and south, how many are there in the tier north and south?

A. They will vary from 3 to 10, I think.

Q. Taking the 9 on the eastern edge of the state, do you think that those counties produce their full ratio of the entire hog crop of Iowa annually?

A. The second tier of counties might, but not the first.

Q. What number of hogs does those two tiers of counties produce altogether in your judgment?

A. It might be difficult to estimate how many would remain left over in Iowa over and above those going to the interior packers and the Missouri River packers.

Q. I speak of the two eastern tiers, where the interior packe-s gets none?

A. I would suppose that a fair estimate would be in the neighborhood of a million and three-quarters.

Q. Are there any packing houses along the Mississippi River in Iowa, do you know?

A. Not in operation, that I know of.

Q. Are there any packing houses east of Cedar Rapids, in Iowa, in operation?

A. Not that I can recollect.

Q. What packing plant is there in interior Iowa to your knowledge besides that of T. M. St. Clair & Company, Limited?

799 A. Morrell & Company of Ottumwa is the principal one, the largest in the State, interior packers.

Q. Well, are there others?

A. Why, Agers at Des Moines, a packing establishment at Marshalltown, Waterloo and Mason City. I am unable to recall any others.

Q. Are these plants extensive, or what you would call small?

A. I would call the packing plant at Marshalltown and at Mason City and at Waterloo somewhat less in their capacity than the others. The others rank, the first would be Morrell & Company in magnitude, and then T. M. St. Clair & Company and then the Agers of Des Moines.

Q. Now combining the average freight rate which you have already given on the live animal until it arrives in the packing house, with the rate from Cedar Rapids, the rate on the finished product from Cedar Rapids to Chicago, what is the total average freight rate that T. M. St. Clair & Company Limited pays from the point of origin where the live animal is bought to deliver into Chicago, on Chicago rates locally?

A. Twenty four and a half cents.

Q. I think your estimate of the average rate on the live animal from points in Iowa to Chicago, was how much?

A. Twenty-one cents.

Q. No, the live animal?

A. From points in Iowa to Cedar Rapids?

800 Q. From points in Iowa to Chicago?

A. The average is twenty one cents.

Q. Is the result then as to this most favorable to the interior packer in Iowa or to the Chicago packer?

A. To the Chicago Packer, of over 3½ cents on the present basis which has been in effect about six months.

Q. How do you arrive at that?

A. Which the average of 21?

The COURT:

Q. That it is favorable to Chicago, how do you arrive at that conclusion?

A. From the fact that the average rate from Iowa point to the City of Chicago, we anticipate as being not over 21 cents and we think it is less.

Q. It makes a difference of 10 or 11 cents?

A. Oh, no sir. The average rate into Cedar Rapids from Iowa points plus the local rate, add the local to Chicago, is 24½. The average rate from the State of Iowa, from these same points to the City of Chicago is——

Q. Is 21 you say?

A. Is 21.

Mr. SEVERANCE:

Q. That is the live animal into Cedar Rapids and the product added together?

A. Yes sir.

Mr. CLARK:

Q. That is the live animal from Iowa points to Chicago?

A. Yes sir.

800½ Q. Now if the rate on the live animals, the average rate on the live hogs from points in Iowa to Chicago, should now be reduced three or four cents per hundred, and the rate on the dressed procuct from the packing house of T. M. St. Clair & Company at Cedar Rapids, to Chicago, should remain the same, what effect would that reduction have as to the interests of St. Clair & Company and every interior Iowa packing house?

A. It would add, to the extent of the reduction just that amount to the disadvantage that they are laboring under at the present time.

Q. It would be just that amount in favor of the Chicago packers?

A. Yes sir, and if it did not put some of the packing houses out of commission, it would reduce them to prescribed lines, confine them to prescribed lines.

Q. Are you able to state about what percentage of the entire product of T. M. St. Clair & Company, limited, their packing house, is sold in Chicago or on the ba-is of the Chicago rates locally, Chicago local rates?

A. I would suppose that it was about 35 per cent. but that varies.

Q. Well, what in your judgment is a fair avera-e?

A. I would think 35 per cent.

Q. Where does the balance of the product of that packing house go?

801 A. For export.

Q. Altogether for export?

A. Yes sir.

Q. Except what is sold in Chicago or on the basis of the Chicago rates?

A. Yes sir. Don't understand that it would move on the Chicago local, but we are obliged to sell it through a broker or a Chicago packer based on the Chicago rate. They might order it in any direction and we would be obliged to give them the credit of the local Chicago rate.

Q. On the basis of the Chicago freight rate?

A. Yes sir, which results in our being obliged to pay the Chicago rate.

Mr. CLARK: I think that is all.

Cross-examination by Mr. COWAN:

Q. Is it not a fact that the percentage of the capacity of increase at Cedar Rapids in your business has been greater than it has at Chicago in the packing houses here?

A. I think not.

Q. Have you the statistics that show the number of tons or number of pounds of freight, accurate statistics that show what has been the ratio of your increase in business since 1902, down to the present time?

A. No sir.

Q. Do you know where those statistics are kept?

802 A. No sir, I do not.

Q. Isn't it a fact that the Cincinnati Price Current keeps those statistics that are considered substantially accurate?

A. They do of the hogs killed.

Q. Do they not also of the products?

A. I have never seen the tonnage. I notice nothing but the reports made from time to time. Some of those are supposed to be accurate and some are known to be inaccurate.

Q. They keep it correctly of the hogs killed?

A. As nearly so as they can. All they can judge from is the reports that are made. It is supposed that they are correct. T. M. St. Clair & Company have increased their tonnage, not on account of any increased facilities, but their anxiety to extend their business.

Q. Other lines of business have also been increased at various places?

A. Yes sir, material improvements having been made on the Missouri river by those that are interested in Chicago.

Q. To what place do you ship your product, from your place for sale?

A. Well, it is principally sold at Cedar Rapids and shipped to all points on the globe, or many of them. We ship to South Africa.

Q. Do you sell it at Cedar Rapids?

A. Yes sir, and at Liverpool, W. P. St. Clair represent

803 T. M. St. Clair & Company at Liverpool and make sales for the continent, England, Ireland and Scotland.

Q. Do you make sales at Cedar Rapids to persons engaged in the business in various of the states, Ohio Indiana, Pennsylvania and New York?

A. Yes, to a limited degree, most of the sales being made through brokers.

Q. 65 per cent., you say of your product is exported?

A. About that.

Q. Via New York?

A. What say?

Q. Via New York?

A. And Boston, and via Baltimore and some via New Orleans.

Q. Have you the export rate from Cedar Rapids?

A. No sir.

Q. How is the rate made up from Cedar Rapids to New York on your export stuff?

A. It is made on the interior rate, taking the export rate to New York and——

Q. What are those rates?

A. 39 cents from Cedar Rapids to New York for export.

Q. What is the export rate from Chicago to New York?

A. 30 cents.

Q. When you ship to places like Indianapolis and Cincinnati, do you not ship on the basis of the proportional rate to the Mississippi river?

A. Yes sir.

Q. And then the rate on to Cincinnati?

A. Yes sir.

804 Q. The export rates are made by adding the Mississippi River rate to New York and your proportional rate to the Mississippi river together?

A. I did not catch that.

Q. In order to get the export rate to New York you add the proportional from your place to the Mississippi river?

A. Yes, there is no question with relation to the condition of rates from Cedar Rapids to any point except the city of Chicago locally. We are on a perfectly satisfactory basis to any other p-int on the globe. The only discrimination is in favor of the city of Chicago locally.

Q. What is your proportional rate to the Mississippi river?

A. Four cents at the present time.

Q. When was the present rate put into effect?

A. Shortly after the reduction was made from the Missouri river to Chicago on packing house products for export.

Q. When was your present local rate to Chicago of 13½ cents put into effect?

A. I could not recall just exactly, but it occurs to me about six months ago. Previous to that, it was 18½. You can see from that the discrimination in favor of Chicago for a great many years.

Q. Assuming that a man shipping hogs from some point where your 11 cent rate is, to Chicago, from west of Cedar Rapids, he would have to pay 23½ in that territory wouldn't he?

A. Yes sir.

805 Q. And 11 cents to your place plus your four cents, plus five cents additional to the Mississippi river, additional to the Mississippi river rate over Chicago, and 30 cents to New York would give you 39 cents to New York on the product which, if you add 11 cents which you pay on the hogs, would be 50 cents whereas the Chicago man with 23½ cents plus his 30 cents could lay his product down in New York for 53½?

A. That is an illustration that might fit the object which you have in view, but it is not a fair one.

Q. I am asking whether that is a fact.

A. 23½ cents would not apply from all of our 11 cent rates.

Q. It does apply through from points west of you to Chicago?

A. Yes, but not until you reach Boone on the Northwestern.

Q. Well, take it at Boone, 23½ cents plus 30 cents is 53½ and 11 cents to your place plus 39 is 50?

A. Yes sir.

Q. Now according to that theory, according to your theory, the one that could pay his product down the cheapest has the advantage over the other?

A. Yes sir.

Q. Then isn't that 23½ cent rate isn't that an undue advantage or rather the comparison of rates an undue preference or ad-
806 vantage to you or disadvantage in that instance.

Mr. LYNDE: That question is objected to and the objection is that it calls for the opinion of the witness and not as to a question of fact, as to whether such a preference if there is one is an undue one.

Mr. SEVERANCE: There is another objection. The witness has not testified to that kind of a comparison. He says the average rate into Chicago from northwest Iowa is 20 or 21 and the average rate into Cedar Rapids is 11 cents.

The COURT: Objection sustained.

Mr. CLARK: We don't object.

The WITNESS: If the counsel will permit it, you might make a demonstration from Dennison or Missouri Valley. We get hogs from Missouri river where the rate is from 16 to 17 cents to Cedar Rapids and 23½ cents to Chicago. You make the demonstration and see what the difference is.

Q. Well, the difference is——

A. In favor of Chicago.

Q. That would be half a cent in your favor?

A. I think not if you will carry the demonstration out. 16½ cents from Missouri Valley to Cedar Rapids plus 39½.

Q. The difference between 16½ and 11 cents would be the difference. That can be figured out. In that event the Chicago
807 man would lay it down cheaper than you did if you both bought it at the same place?

A. Yes sir.

Mr. SEVERANCE: Two cents cheaper.

Mr. CLARK: That is in New York.

Mr. COWAN: Yes, and that is where he says 75 per cent. of his stuff goes for export.

Q. Now suppose you take it from Cedar Rapids on the local at Cedar Rapids.

A. Yes sir.

Q. Where you have a five cent rate?

A. Five cent rate into Cedar Rapids.

Q. The difference would be proportionally greater there just as you change the local rate?

A. Yes sir.

Q. Then suppose you take it within 100 miles from Chicago where the Illinois distance tariff is 10 cents.

A. You have not carried that proposition out.

Q. I did not carry it out in figures, but I am carrying it in my mind and I suppose you are. If the Chicago packer can buy cheaper than you can here in the State of Illinois, do you count that that gives you a right to a rate of freight from the state of Iowa that would put you on the same basis as the Chicago packers?

A. I don't quite understand that.

Q. If t-e Chicago packer can buy we will say 100 miles from

Chicago in the state of Illinois, and ship in at the cost of 11
808 cents, do you think that would entitle you—such a rate that would enable him to lay that product down cheaper than you could possibly do it, if you did not pay the freight——

A. Yes.

Q. Do you think that that would give you a right to have a rate of freight made from the state of Illinois to your place that would enable you to compete with him?

Mr. SEVERANCE: That is objected to.

The COURT: Let him answer.

A. I think not, sir. I think that the people who reside in the state of Iowa have some rights that others are bound to respect.

809 Q. Assume that that is true.

The COURT:

Q. That is, he ought *ot* have a chance for the business there in that State?

A. Yes sir.

Mr. COWAN:

Q. How would you be able to adjust the rates of freight so as to enable the packing plant that might be established in any particular locality to lay its product down as cheap as one in any other locality, without you made an absolute blanket rate from every place to the same packing house, on the live stock?

A. I don't, believe that it is possible for any human being to adjust a basis of rates that would place every packer or every jobber, or any particular class of business men on practically the same basis, in the United States. It is an impossibility.

Q. Geographical location——

A. Geographical location don't enter into it, I don't think.

Q. Geographical location and the condition of the supply of the article manufactured, the location of the market and the demand for it are such that that cannot be done.

A. The conditions are constantly changing, and where there would be a change in one particular locality it might affect—the disadvantage might be that it would spread and would affect various other localities.

The COURT:

Q. What do you think is a proper basis in making a rate?
810 If you were making these rates now, how would you do it, where would you start at to get your figures?

A. Well, competition, your Honor, has much to do with that, and the expense of operating a railroad. That expense is being reduced through the efforts of railroad men. They are obliged to do that. I would take into consideration the increase- cost on account being obliged to maintain the railway properties in a condition that would make it safe for them to transact the business in the way that the public deman-s. In doing that, you must have your rates based—a rate basis that would create a revenue that would enable you to do

that and to pay your fixed charges and the only way that I would see my way clear to do that would be to figure the matter from start to finish.

The COURT:

Q. The cost?

A. Yes sir, the cost.

Q. And apply that to the packing house product and dressed meat as well as the live stock.

A. I think that the conditions your Honor, are quite in contrast with relation to the raw material and the finished product in live stock, in the situation so far as the live stock is concerned and those conditions in relation to iron and lumber.

The COURT: Well, how is that?

A. The character of the service demanded by the live stock
811 shipper——

Q. Requires more care?

A. Yes sir.

Q. Well, that is true of the product, the finished product?

A. Not to that same degree. I have no knowledge of ever having made a claim for delayed shipments for goods for export. They move along with regularity, but they are side tracked on single track roads to let the lice stock pass.

Q. You have to keep it cool, to keep it in proper condition, don't you?

A. No sir, the packer keeps his own product cool. We have no icing charge between Cedar Rapids and New York on our export shipments.

Q. That is considered in the pay for the use of the car, the icing and all of that is considered somewhere. It comes out of the railroad company in the end?

A. If we were exporting from Cedar Rapids a character of meat that would require re-icing between Cedar Rapids and Liverpool, we would be at the expense ourselves, absolutely. The railroad would not be at any expense further than the switching of the car to the ice house.

Q. Do you own refrigerator cars to ship your own meat?

A. To a limited extent, we had 150 that we use for our foreign shipment.

Mr. COWAN:

Q. Previous to 1902, what was your rate to Chicago then,
812 on packing house products, 18½ cents?

A. 18½ cents.

Q. What was your proportional to the Mississippi River?

A. Five cents at that time.

Q. What did it then cost you to New York?

A. Forty cents.

Q. What does it cost you now?

A. Thirty-nine. The Mississippi River is based on 116 per cent. of Chicago.

Q. Do you claim that that rate of freight ought to be the same

on the live Stock into Cedar Rapids or out of Cedar Rapids of the packing house product, to make that equal to the same rate from the original point of shipment of the live hogs to Chicago? In other words do you claim that the two articles ought to be as low as a through shipment?

A. No sir.

Q. Do you claim it ought to be lower?

A. No sir.

Q. What ought the difference to be?

A. I would make the rate sufficient to pay the terminal charge of switching at Cedar Rapids. It would possibly cost half a cent a hundred. In some instances it might cost a cent, but it would not in all cases. The difference now against us is 3½ cents, but we have no serious objections to that. We have other advantages that we take into consideration. We cannot have any one fixed definite particular policy to carry out in relation to one particlar thing. We take the whole matter in a general way.

813 Q. Do you know what the proportional is to the Missouri River to the Mississippi?

A. On Export?

Q. Yes?

A. I think it is 18.

Q. That would be the same as Chicago?

A. I think the local rate from the Missouri River to Chicago is 20 cents.

Q. If the proportional to Chicago—the proportional of 18½ from the Missouri River plus 30 would be 48½?

A. Yes sir.

Q. The Missouri River packer could lay down the packing house product from Missouri to New York for 48½. Now, the shipper of hogs to Chicago, if he wanted to ship to Chicago from the 23½ cent territory would have the 23½ cents to Chicago and the packer would have to pay 30 cents, which would make it cost him 53½.

A. Woul-'t you include the int-rior packer in Iowa in that? I Would like to have you do that. You are not taking into consideration the percentage of hogs that go from the Missouri River to Chicago on the proportion of the through rate.

Q. Isn't that what it figures, out 53½ cents that the product would cost the Chicago packer?

A. Moving on local tariffs, yes. The Missouri River packer would have the advantage of the Chicago packer to that extent, that

814 the cost—the hogs would move on local tariffs on your supposition which I don't understand that they are doing.

The COURT:

Q. Not from the Missouri River?

A. No sir, they come from Kansas City to Chicago on the proportion of the through rate.

Mr. COWAN:

Q. You are assuming that the packer pays the freight?

A. What say?

Q. You are assuming that the packer pays the freight?

A. The interior packer is obliged to base his prices on that.

Q. Suppose the live stock shipper is the man that is paying the freight, suppose it comes out of his pocket. Do you contend that it is fair that the Missouri River packer should ship the product at 18½ cents while the producer of the hog in that territory should have to pay 23½?

A. The shipper derives his benefit from the increased price of the hog at Chicago. I know of no shippers in the State of Iowa that are complaining of the persent rate on hogs from any point in Iowa to Chicago.

Q. You mean to say that the price of the hogs in Chicago is 5 cents a hundred pounds more than at the Missouri River?

A. That depends on the condition. It depends on the de-
815 mand at the Missouri River as compared with the demand at Chicago. It is not unusual that there should be 15 cents difference in the price.

Q. Is it ever higher on the River than it is here?

A. The Missouri River?

Q. Yes.

A. Not that I know of. I think there has been an exception to that where the Missouri River packer has paid even more than the Chicago packer. That was on account of the surplus.

Q. Who is it that fixes the price, if anybody, that you get for the products that you export, does the big packer fix it?

A. What is that?

Q. Who fixes the price of the product that you export, do you fix it, or does the big packer fix it?

A. That is a very large question.

Q. What is your opinion?

A. I think it is largely a question of supply and demand.

Q. And the big packer is the principal supply?

A. Of beef, yes. I don't think that he has that same control of the pork product.

Q. Are there any live cattle killed to any considerable extent in the State of Iowa?

A. No sir, not that I am aware of. The packer at Des Moines kills more liberally than any other packer in the State, I think. Understand, that I do not include Sioux City in any of this evidence in relation to interior packers.

816 Q. Do you know of any other place in the country where the rate on the dressed beef product is less than the live stock, except as produced in this adjustment between Chicago and the Missouri River or the Mississippi River?

A. Any other place in the West?

Q. Anywhere?

A. It has prevailed for a number of years at St. Paul, a long time previous to the reduction of the rate from Kansas City.

Q. Out of St. Paul which way?

A. To Chicago.

Q. A lower rate on the packing house product and dressed meat?

A. Yes sir.

Q. I intended to include St. Paul in my question because it is involved in this case.

A. That has not been considered as a discrimination and no complaints have been made that I have ever heard.

Q. It has not been a discrimination, or so considered by whom?

A. It has not been considered a discrimination at any time.

Q. Who has not considered it as a discrimination?

A. I say, I don't know of any one except the Interstate Commerce Commission who considers it a discrimination.

Q. As a general proposition does not the finished product takes a higher rate than the raw material?

A. On iron and wood that would prevail but the same conditions do not prevail.

Q. On what articles is it to the contrary?

817 The COURT:

Q. Flour and wheat, how is that, and corn meal?

A. I would say that the finished product should take a higher rate on almost any commodity that I can call to mind. I would think that rule a good one.

Q. Except meats?

A. Except meats. The conditions that surround the movement of the live animal are so—the live animal as a raw material—are so in contrast to the conditions surrounding the movement of lumber and *los* and iron ore, that they cannot be compared. The increased cost in the movement of live stock is so in excess of the cost of the movement of ore and lumber, or logs that they cannot be considered in the same category in my opinion.

Mr. COWAN:

Q. That has been considered the case in all of this trunk line territory and the Atlantic seaboard, has it not? You can ship live stock cheaper per hundred pounds to New York than you can the dressed meat and packing house product. That is true, isn't it?

A. Well, I believe that that has been, the basis of rates of *rates of* that character have been in effect east of Chicago, but the Eastern lines do not use and do not handle the live stock except in rare instances in that expensive manner that is demanded of the

818 Western lines, in proportion the expense incurred in handling the fresh meat. There was one time when specials were run over the eastern lines but they were discontinued as they were discovered to be very expensive. The large pro-ortion of tonnage on this high class that you speak of is——

Q. Well, isn't it a fact that live stock can be carried now to New York for export or for killing purposes from Chicago, carried in live stock trains?

A. Carried in train loads?

Q. Yes?

A. I don't know what the rate is, yes sir.

Q. If the rate on the finished product in all cases today were

made less than the rates on live stock, is it not a fact that the large packing centers could absolutely dominate the killing of practically all of the meat at these places. Could they ship the live stock to New York and Boston and Pittsburg and Buffalo and a great many other places that it is shipped to now, if the packing house product and dressed meat rate were lower than the live stock.

A. They seem to be able to do it out of Iowa to Chicago notwithstanding the efforts of Morrell & Company and T. M. St. Clair & Company.

Q. Chicago is where the principal large packers are located?

A. Yes, there is a lower provision rate from these points to Chicago than the live stock, yet with that, the interior packer seems to have the worst of it to the extent of 3½ cents a hundred at
819 least.

Q. Well, during the ordinary run of business, the doing of the business on a very large scale necessarily involves the doing of it somewhat cheaper?

A. Not necessarily so. There is no packing house on the American continent that can prepare pork products any cheaper than St. Clair & Company can. That may seem extravagant statement to you, but that is true.

Q. You don't need a preferential rate then in order to put you on an equality?

A. We have never asked for anything of that kind.

Q. Did you not ask for the old basis of rates to be changed?

A. Yes sir.

Q. Didn't you do that because it would give you an advantage?

A. No sir.

Q. Give you an advantage over what you previously enjoyed.

A. Oh yes. It was practically prohibitory, to the city of Chicago. We were prohibited practically from doing business with Chicago and all tonnage that we were obliged to sell on the basis of the Chicago rate which had to be deducted before the shipment was made in any direction.

Q. You spoke of the average rate of freight from the state of Iowa to Chicago. What you mean there is the average that is paid if you take the rates from various places and the proportion shipped?

820 A. That we believe to be paid, yes sir.

Q. There is not anything shipped on any such rate except where that rate happens to prevail from some particular station, say 20 or 21. There is no average blanket rate is there, except that 23½?

A. If you would allow me to make the explanation of how I arrive at that conclusion that the average rate is less than 21 cents, I will do so.

The COURT: Go ahead if it don't take too long.

A. The basis of rates from the western tier of counties to the city of Chicago locally is 23½. The western tier of counties to the extent of, I would think 75 per cent. is eliminated, as that goes to the Missouri river packer. That 23½ cent rate extends up to within a point of some 15 miles west of a line drawn throug- the center of

the state north and south, so that the rates begin to scale down below 23½ previous to its passing that line drawn north and south through the state and there is as large a percentage of hogs produced in the east half of the state of Iowa as there is in the west half. A very large percentage in the three eastern tier of counties go to Chicago at the reduced rate extending from 15½ cents and scale up to 18½. Now the rate then is scaled up from 18½ to Boone, Iowa or Madrid on the St. Paul road which is in the
821 neighborhood, I should think of from 10 to 15 miles beyond this line drawn north and south and then it enters the zone of 23½ cents. So a very large proportion of the hogs that come from Iowa to Chicago come on this lower basis, as the rates are practically prohibitory locally in the state of Iowa back to the interior packers plus the local rate east to the city of Chicago locally.

The Missouri river packer rarely extends with his purchases east of the western tier of the state of Iowa and sometimes extends up however to Carroll in the second tier of counties, so that I estimate there is in the neighborhood of three quarters of a million of hogs from the western tier of counties in Iowa that seek an outlet on the Missouri river.

There is approximately a million and a half killed by local packers and my estimate is that there is approximately seven million or seven and a half millions coming to Chicago. With four millions of those originating in the territory and taking the rate of not exceeding 20 cents and from that scaling down to 15 cents. I think my estimate of the average very liberal. What may prevail in the southern tier of coun-ies through the territory and the conditions along the lines of the C. B. & Q., I am not familiar with them, and it is only fair I think to assume that the conditions there would not be in contrast to those elsewhere in the State.

822 That is how I have based my calculations and how I have arrived at the conclusion that the rate is somewhere between twenty and twenty one cents out of the state of Iowa on an average to the city of Chicago on the hogs that they actually receive from the state of Iowa. The interior packer is provided largely, I would say to the extent of 80 per cent. of all of his purchases from the territory that pays 23½ cents to Chicago.

Mr. COWAN:

Q. How many hogs in your estimation are there raised within a radius of 75 miles from Cedar Rapids?

A. I have no idea, I cannot confine myself to any prescribed lines. We buy at any point along the line of the Chicago Rock Island & Pacific, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul and the Illinois Central.

Q. You seem to have splendid ideas about the location of the great bulk of the hogs in the state of Iowa?

A. Yes sir.

Q. I want to know what your estimate is in respect to the territory 75 miles out each way from Cedar Rapids?

A. I would not know how to make that estimate on the basis of a circle. I would say that the tiers, you might be able to make

that more clear to your mind yourself than I could, but my
823 estimate is (and I think I am justified in it), that it would run on the average, in the neighborhood of a million of hogs for every tier of counties north and sou-h in the state of Iowa.

The COURT:

Q. Are there ten tiers?

A. I think there is. I have forgotten whether there is nine or ten. If my recollection serves me correctly there are 98 counties in the state.

Mr. COWAN:

Q. How would you average it by counties?

The COURT: He says by tiers.

Mr. COWAN: It would run something like 100,000 head to the county.

The WITNESS: Yes. Well, some of these counties will raise twice the amount that others will.

Q. How is it in the vicinity of Cedar Rapids, are those hog raising counties?

A. Not very extensively. In the immediate vicinity of Cedar Rapids, the territory is largely occupied by small farms or feeders and horse raisers and dairy interests. It is occasionally the case that one county will be entirely wiped out by cholera. I can only speak in a general way, by averages.

Q. Have you any statistics relative to the assessed number for taxation in each county?

A. Not at all, sir.

824 Q. That is published, I presume?

A. No sir, not that I know of. It may be.

Q. How much of the product which you make is that which goes through the Mississippi river gate-ways, the products which you ship?

A. The basis of the Mississippi river rate?

Q. Now how much of it actually moves through the Mississippi river gate-way?

A. I cannot understand that in any other way than that you wish a reply with relation to the percentage that moves on the basis of the Mississippi river rate.

Q. No. That is not what I mean.

The COURT:

Q. How much do you ship south?

Mr. COWAN:

Q. How much of it moves across the Mississippi river?

Mr. SEVERANCE:

Q. How much of it goes east?

A. I am not prepared to give a statement on the proportion of the tonnage that goes across the Ohio river. That varies.

Q. How much do you sell locally west of your place in the state of Iowa and what proportion do you ship out that goes east?

A. Our western shipments are in less than carload lots
825 distributed through the state of Iowa, Occasionally to Denver and some to the Pacific coast points and a small percentage to San Francisco.

Q. You have some idea as to what proportion moves eastward either for sale or export and when I say "eastward," I mean east of the Mississippi river including New Orleans?

A. I would not call New Orleans east of Chicago.

Q. That moves east of the river, that crosses the river?

A. Well, that practically embraces all of our product except the local shipments to the Pacific coast points. We ship in the neighborhood of 100,000,000 a year of finished products. We did last year and the previous year, with a very small percentage of it to the Pacific coast points.

Q. Well, I thought you had an idea of whether it was 1, 2, 3, 4, or 5 per cent.

The COURT: How is that material, anyway?

The WITNESS: Not at all.

Mr. COWAN: I desire to have some idea about whether the great bulk of the traffic in the product came east.

A. Naturally it does, yes sir, the same as the city of Chicago or the Missouri river packers; we occupy the same position relatively that they do.

Q. And the Missouri river packers ship the great bulk of their product east?

A. I think they do. They have the advantage of us on
826 the southeast and southwestern points. They supply all the southwestern points, interior Kansas, Texas and Arkansas. We have no access to that territory.

Q. Previous to the time that you got these rates reduced or they were reduced, as you have mentioned, did you pay the published rate or did you get the same advantage that the Missouri river packers get in shipping at less than the published rates?

A. We have never asked for a rate that would give us the advantage of any shipper.

Q. But that is not my question. Now my question was whether you paid the published rate previous to January, 1902?

A. We have always paid the published rate.

Mr. COWAN: That is all.

827 Mr. SEVERANCE:

Q. From whom do you make your purchases of hogs? You stated the points from which they came, but from whom do you buy them, people who pick them up in the country?

A. From a hog dealer. We usually arrange with one hog dealer at a station. We rarely buy from — to exceed one at one point.

Q. Are you blessed with anything in the nature of a live stock exchange in Cedar Rapids?

A. No sir.

Q. There is no tribute of 50 cents a head or 25 cents a head levied on you then?

A. None whatever. There is no expense attached to the shipment of a carload of hogs to Cedar Rapids.

Mr. LYNDE:

Q. You buy largely in that immediate territory?

A. Yes, when the hogs are desirable. We labor under the disadvantage of being located in the very heart of a heavy corn district which gives us a heavy hog when they are fed out so it necessitates us, in the supplying of the character of meat that our customers demand, it compels us to seek territory where we can find the hog that is desirable for the making of that character of meat.

Q. You buy chiefly in the hog producing localities?

A. Yes sir.

Mr. SEVERANCE:

828 Q. How many people are employed at your plant?

A. The average the year around, I would say is seven hundred. There are times when it is down to five hundred and sometimes there are a thousand. There were a thousand last winter.

Q. What is the population of Cedar Rapids?

A. About thirty thousand people.

Q. This is a very large industry for that town, then?

A. Yes, we are practically responsible for a town of 2500 people. There are a great many of our employés that are heads of families.

Redirect examination by Mr. CLARK:

Q. I omitted to ask you what railways center in Cedar Rapids?

A. The Chicago, Milwaukee & St. Paul, the Chicago, Rock-Island & Pacific, the Chicago & Northwestern and the Illinois Central.

Q. Any others?

A. Not steam railroads, there is an inter-urban railway from Cedar Rapids to Iowa City.

Q. Do you buy and ship over all of those lines?

A. Yes sir. We take into account the rec-ipts of hogs and keep a regular account of every pound that comes in on the various lines and give them credit for that tonnage. Each road then is
829 entitled to a certain percentage of the product out, and we see that they have it. If a road brings in 40 per cent. of the raw material, we think it incumbent upon ourselves to see that they secure 40 per cent. of the output, but not only that, but we use our influence in securing for them 40 per cent. of the incoming miscellaneous tonnage which for the last five years has been about equal to the raw material.

Q. That is about a hundred millions of pounds?

A. Yes sir.

Q. And that don't include the live hogs at all.

A. No sir. The last five years will average a hundred millions pounds of miscellaneous freight into Cedar Rapids, on account of St. Clair & Company.

Q. Do you buy of the producer, the grower of the live hog in any of the purchases that you make, do you make any of your purchases direct from the farmer?

A. In very rare instances. We buy generally from the dealer who accumulates the hogs.

Q. The local dealers that you employ at these stations?

A. Yes sir. Those that care to eliminate the excitement of a speculation however, prefer to come to us for the reason that they are acquainted with the grading of the hogs that come to us and we name the price and they compare that with what they are
830 likely to secure by coming to Chicago and without having the hogs in their possession, they can go out with perfect safety and without taking any chances on the lines and buy a carload of hogs and ship them to Cedar Rapids on a profit.

Q. That is the local dealer?

A. Yes. This price is made up for to-day's delivery or to-morrow's deliver-, or in extreme cases, a week's delivery.

Q. You have spoken in a general way of the inhanced or increased cost of shipping a live animal from Iowa points and points west of Chicago as compared with shipping the finished product. I wish you would detail the items of that enhanced cost as far as you can, in shipping the live animal, what does it consist of?

The COURT: Can he do that? These railroad men are giving, and will give all of the figures that can be given on that subject.

Mr. CLARK: I think your Honor, he has had a great deal of experience in that.

The COURT: I think I understand that pretty well. If you think you can give it, give the figures on the dr-ssed meat product and on the live stock.

A. I have been in quite close touch with the situation and have been in the railroad business for eighteen years myself.

In the movement of live stock the expense is materially
831 greater than that of dead freight, the question of expense. One item alone. My experience in railroad matters leads me to believe that in claims for loss and damages at least, claims of that character they would exceed 75 per cent. of the total expenditures of the Claim Department of any railroad that handles a good liberal percentage of live stock movements. I think any railroad of any magnitude would bear me out in that opinion.

Q. Is there in your judgment any increased cost in putting stock through to Chicago rapidly, the live animal?

A. Very materially. The faster you run a train, the greater amount of money it costs to maintain your track.

Q. Is it not true—take the shipping points in Iowa, that the shipper practically requires that his animals shall be put through on a 22 hour or 24 hour time so as to avoid unloading and feeding?

A. Yes sir, that is true.

Q. Is that the reason for the increased speed?

A. Yes, if he does not arrive in time for the market, he makes a claim. That has been in evidence before here.

Mr. CLARK: Well, that is all.

Mr. SEVERANCE: One question. You say that you buy from the dealers at these country points. It is the dealers, isn't it? At these country points that ship the live animals to Chicago?

832 A. Yes sir.

Q. So you buy from the people that sell in Chicago?

A. Yes sir.

Q. And in making your purchases you eliminate this middleman, the live stock exchange in Chicago?

A. Yes sir. It is rarely the case that we buy from any one in the country that does not divide his other shipments between Chicago market and ourselves. If it is desirable, we get the hog and if it is undesirable, it goes to Chicago.

Q. Another advantage for the Chicago packer is their constant advance, which frequently happens. Then it is almost impossible to buy hogs in the country. When the market in Chicago is steadily advancing, the longer the hog is on the road, the higher the rate will be when he gets here. When the opposite condition prevails, we labor under the disadvantage of the fact that the hog shipper is apt to consign his hogs into the very first place he comes to.

Recross-examination by Mr. COWAN:

Q. Are the prices of hogs which this dealer sells to you, on which the sales are made to you on the basis of the Chicago prices?

833 A. Yes sir. It is a question of the freight rate and the cost of the terminal and the risk that the man runs in losing the hogs en route.

Q. The Chicago market being so much greater than all others in the country, it practically regulates the price?

A. Yes sir.

Q. Now, what is the difference that you make in your purchases between the price you pay and the price at Chicago?

A. The freight rate plus the terminal charges in the City of Chicago. After that is taken into consideration, it is the character of the hog. From some districts we do not purchase any at that price. It varies with the character of the hog that is presented. If we desire it, we pay a price that is satisfactory to the shipper.

Q. You have no basis that you pay so much less or so much more, except the things you have mentioned.

A. Yes, but the first thing to be eliminated is the freight charge and the terminal charge at Chicago. That enters into it, and in making that purchase on the basis of the present rates for Chicago business locally, we are at the disadvantage of over 3½ cents. For all other points, we are on a basis that is practically satisfactory. We do not believe that we are discriminated against, neither do we see that we have the advantage and don't believe that we have. If we have, the railroad companies would put a stop to it very quickly.

Whereupon the further hearing of said cause, was adjourned until the following Monday, September 25, 1905, at 10 o'clock a. m.

834 MONDAY, *September* 25, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon A. B. STICKNEY, was called and sworn as a witness on behalf of the defendant Chicago Great Western Railway Company and testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Stickney?
A. St. Paul, Minnesota.
Q. What is your business?
A. I am president of the Chicago Great Western Railway.
Q. How long have you occupied that position?
A. Well, I have occupied that position for about twenty one years.
Q. You were engaged in railroading before that time, too, were you not?
A. Yes sir.
Q. How many years altogether have you been railroading?
A. Since 1872.
Q. During that period have you had more or less to do with the making of railroad tariffs?
A. Yes sir, more or less.
835 Q. During most of that time?
A. During most of that time I have been familiar with railroad tariffs.
Q. Now, Mr. Stickney, you are familiar with the question that we are discussing here, which is the question of the relative rates on packing house product and dressed meats on the one hand and live stock on the other, between Missouri river points and Chicago and between St. Paul and Chicago. Now, Mr. Stickney, will you state to the court the difference between local and proportional rates on these various commodities and the reasons, if you know of any, why there should be a difference in the charges for the transportation of live stock on the one hand and packing house products and dressed meats on the other. Do it in your own way?
A. I have been examining a great mass of figures and facts for the last week or ten days, and in order to present them intelligently, I have written them down and if I am permitted to read what I have here, why it will consume less time and be more satisfactory.
The COURT: Yes, it would be very satisfactory if it is responsive to the question.
Mr. SEVERANCE: I made the question general in its terms so that it would make the answer responsive.
A. There is a distinct difference both in respect to the principle involved and the cost of the transportation between through
836 shipments of live stock from market to market, and local shipments picked up at local stations and transported to market.
The basic principal of the local live stock rate is the cost of the facilities required and cars used, the terminal work plus the cost of

hauling. The cost of the facilities, cars used and terminal work is nearly the same in both the short and the long haul, hence the approximate cost of facilities, cars and terminal work, should be reflected in the tariff of charges for the shortest haul will always and should always be relative to the distance hauls, much larger than for long hauls. Therefore, long haul tariffs of rates should be the short haul rates plus a practically constant quantity for each unit of additional distance hauled. This is the principle, when undisturbed by competition of the local tariff and when built upon this principle, every station receives the advantage to which it is entitled by reason of its locality, in respect of distance from market and in no other way can such advantage of station location be respected and maintained. For example, from Gretna, a station on the Chicago Great Western road, 26 miles west of Chicago, the nearest station from which any live stock was shipped in the year 1905, the rate on cattle is 6½ cents to Chicago. This rate is gradually built up until it reaches 23½ cents at Council Bluffs on the Missouri river,
837 500 miles west of Chicago. Then from this 20 cent rate—
Then this 23½ cent rate is gradually built up on the Union Pacific Road, to say Elkhorn, Nebraska, 28 miles west of the river, where the rate to Chicago is 27½ cents.

As the Union Pacific has no road east of the river, it presents the problem of how the Union Pacific can ship live stock from Elkhorn to Chicago at the rate of 27½ cents. If the Union Pacific hauls it to the Missouri river and pays the railway east of the river its local, 23½ cent rate, it only leaves 4 cents for the use of the Union Pacific facilities at Elkhorn, the use of its cars, and terminal work, plus the cost of the haul, 28 miles long, which is inadequate.

On the other hand, if the Union Pacific makes a rate between Elkhorn and Chicago, say of 6½ cents above the 23½ cent rate from Council Bluffs to Chicago the tax imposed upon the producer of the cattle at Elkhorn and upon the producers of cattle in all the territory west of the Missouri river, for transporting their products to Chicago is altogether too much compared with the tax imposed upon the producer at Council Bluffs and the territory east of the Missouri and would not give the producers at Elkhorn and the territory west the advantage of location to which they are entitled in respect to
838 the distance to market. The point presents the necessity of making through rates from Missouri river markets to Chicago lower than the local rate, to prevent *between* discrimination between producers and localities. In fact, the through rate from the Missouri river, to Chicago cannot, in a proper sense be regarded as a r . It is simply a division of the actual or local rate as between the railway companies east and west of the river. All companies east of the river admit the principle that the companies west of the river are entitled to a larger rate in proportion to the distance hauled and therefore accept a proportion of the rate which is less than their local rates from the Missouri river to Chicago. The rate on the product of live animals from the packing houses on the Missouri river to Chicago is essentially the same. A division as between the railway companies of the rate in effect allowing to the lines west of the river practically

their local rates for bringing to the packing houses the live animals and accepting the balance of the rate, for hauling the product to Chicago.

From these items it seems evident that if we desire to compare the rates on live stock with the rates on the products of live stock, to determine their relativeness, we should compare the division of the rates which the lines east of the river accept for transporting the live stock with the divisions of the rates which the lines east of the river
839 accept for transporting the products of animals.

Such a comparison will show that the rates as they now exist are in line with the holdings of the Interstate Commerce Commission in this case, namely, that the rate per hundred weight on live stock should probably be less and in no event should they be more than the rates on the products of live stock as the following schedule of rates, which had existed for several years on cattle, hogs, packing house products and fresh meat, from the market towns of Kansas City, St. Joseph, and Omaha, to the market town of Chicago that is from market to market, shows conclusively.

Schedule of Rates.

From Kansas City, St. Joseph and Omaha to Chicago on cattle, ranges from 14 cents to 22 cents. On hogs from 16½ cents to 22 cents.

Packing house products 20 cents, fresh meats 20 cents. The rate on both cattle and hogs is the actual difference between the rates from the point of origin to Chicago and the short rates from points of origin to the Missouri river, which gives varying rates from the Missouri river to the market on live stock. The rates on the products of the animal is a fixed rate and based upon the average of the varying rates, in effect the same principle. If the shipments are des-
840 tined to points east of Chicago, a rate is made on the so-called Mississippi river basis, which reduces the additional rate from the Missouri river points on all commodities the cattle and hogs as well as on the packing house products and fresh meats, about 1½ cents per hundred weight making the following schedule from Missouri river points. Cattle 12½ cents to 20½ cents. Hogs 15 cents to 20½ cents. Packing house products 18½, fresh meats 18½.

It is now proposed to show by analysis that such divisional rates are not equivalent rates based on the most of mileage, but that the live stock rates are too low and that, as a matter of fact, the live stock rates based on the cost of mileage, instead of paying less per hundred weight should be more per hundred weight than the rates on the product of live stock. For convenience I will use the average of the varying rates on live stock disclosed in the first schedule, which would be from Kansas City, and St. Joseph to Chicago, 18 cents per hundred weight on cattle, 19¼ per hundred weight on hogs. As the railway company cannot haul live stock or the product without hauling the car, and as it costs as much to haul a ton of cars as a ton of its load, and as live stock is hauled in cars whose average weight on the Chi-

cago Great Western line is 27,500 pounds and the product is
841 hauled in refrigerator cars having a weight, including ice of 41,000 pounds and as the average load of cattle is 21,513 pounds, of hogs only 16,635 pounds,of packing house product 31,632 pounds, and fresh meats only 22,414 pounds, these varying weights of car and load must be taken into consideration. Then there are certain burdens which pertain to the transportation of live stock which do not pertain in the same degree to the transportation of the product which must also be taken into the account before the true comparison of cost can be made.

I will speak of these unequal burdens first. The packing house products and the fresh meats are not hauled in cars owned by the railroad, but in refrigerator cars owned by the packers and the expense which is most talked about is the mileage paid for the use of the refrigerator cars. In order to understand this mileage arrangement it must be borne in mind that the mileage paid covers the entire cost of the removals, the cost of repairs to such refrigerator cars, necessitated by ordinary wear and tear in fair service.

In addition to the mileage, the railway company pays for damages done to any of the car- by unfair usage, derailment and accident. On the Chicago Great Western line in 1905, an average of one tenth of a cent per mile. The mileage paid was one cent per mile. The total payment for the use of the car, renewals and repairs, one
842 and one tenth cent per mile.

The packers owned these cars, they load them and unload them and, if not required for use between Chicago and Missouri river points, they can use them in distributing their product over other lines, so that they are loaded and unloaded promptly and kept almost constantly in motion which enables them to make a much larger daily mileage than it is possible for the railroad company to make with their own cars.

It is probable that the average mileage of these refrigerator cars is approximately 100 miles per day, while the average mileage of railroad cars of all descriptions is known to be about 22 miles per day and the average miles of stock cars is less than 22 miles per day.

On account of such superior administration the packers make a profit although not as large as is generally supposed, from the ownership of such cars by leasing them on the terms mentioned but as I will show later no railroad could make a profit on such terms.

No railroad could maintain such superior administration because not owning their output or controlling its route, one day it would be called upon to furnish a large number of cars, the next day few or none, with no way to tell in advance on what day the demand would be large and in order to supply the first day's demand a great many cars would stand idle on small or no demand.

843 This proposition seems to be corroborated by the movement of stock cars, the actual loading and unloading of which consumes no more time than the actual loading and unloading of packing house products, and therefore it would appear that stock cars could be kept as constantly in motion between markets in the through stock transportation as the packers refrigerator cars. But

this is not the fact for the reason among other things that the amount of stock to be moved between such points is not like the packing house product, approximately a constant quantity day by day. Some days and some months there is a larger demand for cars. Other days and in other months, practically no demand whatever. Evidently, the railroad must own cars enough to supply the largest demand, and, as railway companies have no control over the routing of such live stock, they cannot tell in advance whether the live stock which is to be moved will be routed over their lines or over the lines of their competitors, so they can never tell in advance what the demand for cars will be from day to day. Therefore, a large number of stock cars are standing empty frequently for days and even weeks in succession waiting for loads.

To illustrate how irregular this movement is, the following data is taken from the records of the Chicago Great Western Rail-
844 way Company showing the actual movement of last year for live stock from South St. Paul stock yards to Chicago stock yards.

July	62 cars.
August	264 cars.
September	240 cars.
October	222 cars.
November	195 cars.
December	45 cars.
January	57 cars.
February	26 cars.
March	17 cars.
April	208 cars.
May	47 cars.
June	17 cars.
Total	1400 cars.

It will be noticed that more than half, 726 cars, moved in the three months of August, September and October, most of which was live stock direct from the ranges. The total amount of such stock which was shipped from St. Paul to Chicago during those three months was 7,374 cars. This stock came into South Omaha from the west, some days 500 cars and some days none and after its arrival, commenced the scramble between the different railway companies for its further shipment to Chicago. In the scramble the Chicago Great
845 Western got about 10 per cent. The shipments were just as irregular in respect to days of shipments as in respect to months. The first day of August the Great Western got 13 cars. In the next six days six cars, or an average of one car per day. The next day it got 17 cars; the next day 23 cars, and the next 13 cars, and in the following three days none, and so on during the month. The numerous disadvantages due to such irregular and uncertain movements may be seen from the following astounding statement of facts. The Chicago Great Western Railway Company moved during

the last fiscal year, an aggregate of 15,134 cars of live stock, an average distance of 197 miles, being an average of less than 42 cars per day. It owns 686 stock cars which would seem to be enough to move 42 cars per day an average distance of 197 miles, but as a matter of fact it had to rent from private car lines cars to move 54 per cent. of said live stock. That is to say 686 cars under existing conditions will move only an average of 19.74 cars of live stock per day, an average distance of only 197 miles, equal to only 5 miles and eight tenths of a mile per day per car.

These stock cars were rented under the same conditions, in respect to repairs, maintenance and mileage, as the refrigerator cars, except that the mileage paid for stock cars was six tenths cents per
846 mile instead of one cent per mile.

The cost of a stock car is about $600.00, while the cost of a refrigerator car is about $1200.00. Knowing that we were able to rent these cars at six tenths of a cent per mile, and supposing that the private car lines found it profitable, in my testimony before the Interstate Commerce Commission based upon this fact, and without much investigation, I estimated that it cost the railway company in interest, depreciation and renewal, about six tenths of a cent per mile for the use of their own cars. But, upon examination of actual accounts, I find that the actual cost is much larger. I am unable to separate the cost of repairs of stock cars from the cost of repairs of other freight cars, but I find that the average cost of labor and material only on repairing the total freight equipment of the Chicago Great Western Railway Company is about four tenths of a cent per freight car mile. I am able to find data in only one report of other railroad companies which I have been able to examine upon which to make the same calculation, but that gives practically the same results. If it costs the private car lines as much to make their repairs, it is evident their profits are not excessive. There are conditions however pertaining to the private stock car mileage which
847 tend to increase their average daily mileage, and therefore reduced the average cost per mile for repairs.

For illustration, stock cars which were rented by the Chicago Great Western Railway were largely the cars which had been sent out loaded at the western ranges, making long hauls, partly over the Great Western Lines and partly over the Pacific Lines, during the season of the range stock movement, and hence their average mileage would be larger than the average daily mileage of the railway stock cars and then between Chicago and the east, they get long runs which make the larger daily average mileage than the railway stock cars and to this extent the cost of their repairs should be less than the cost of repairs of the stock cars owned by the Railway Companies per mile.

In discussing the private car lines and especially in the discussion of the packing house product rates between the Missouri River and Chicago, much has been made of the mileage of one cent per mile paid for the use of refrigerator cars which is regarded as excessive.

While it is apparently assumed that live stock hauled in Railway Company cars bears no such burdens. This is a mistake. When

the Railway Company transports freight in its own cars, instead of paying a fixed amount per mile for the use, renewal and repairs of the cars, it pays the interest on the cost of the cars, and it pays the expenses, whatever they may be, of renewals and repairs.

848 Now, I will state the account of the Chicago Great Western of these burdens in respect to all its freight, it being impossible to distinguish between live stock and other freight, because its stock cars are used to some extent in other than livestock shipments.

The freight car shipment has cost $5,583,425.75 of actual cash. The interest on this amount for one year at 5 per cent. is $279,-161.25.

It is evident that no amount of money spent in repairs will prevent all of this equipment in the course of years, becoming superannuated and sent to the scrap heap, as there are now no cars in use on any of the railways in the United States which were in use 25 years ago, and it is fair to estimate the life time of a car at, say, 25 years, which would make the annual depreciation, 4 per cent. Four per cent. on the cost is equal to $223,327. The amount actually expended for labor and material only in repairs of freight cars during the fiscal year was $307,211.90. In order to make these repairs and the repairs on its locomotives, and so forth, the Railway company must have expensive shops and tools, and some proportion of the interest on the cost and the depreciation and repairs of the shops and tools is a burden properly chargeable to this account. The actual

849 cash cost of the principal shop and tools has been $603,-043.88. Five per cent. interest on this amount, and 5 per cent. for depreciation and repairs upon the shops and tools which is probably less than the actual cost, would be, $60,304.38. Now, say 20 per cent. of this $60,000 is chargeable to freight cars, that would make $12,060.86 chargeable to freight cars. In order to make these repairs and the repairs on the locomotives and so forth, the Railway Company must carry a large stock of material. Some proportion of the interest on the stock thus carried is chargeable to the cost of repairing freight cars. The average stock of material carried for such repairs is $486,386.18, and it is estimated that 60 per cent. of this stock is for freight car repairs, or say, $291,831.60. The interest at 5 per cent is $14,591.44. In order to make repairs to freight cars every company must have side tracks at all of its divisional points and many of its principal stations, especially devoted for standing freight cars, for the purpose of doing the repairs and used for no other purpose.

The entire interest and cost of maintaining all these special side tracks constitutes a burden chargeable to freight cars. Many of these side tracks, and, indeed, most of them, occupy land which has cost at the rate of $5,000 per acre, and some of it as much as $20,000 per acre.

850 In addition to the land occupied by the sidetracks, there must be vacant equally high-priced land, adjacent for piling the repair material and storage houses. The Chicago Great Western Company has plants at ten such stations and minor plants at other stations. I have not had time to get the exact mileage and

quantity of land consumed by these special side-tracks, but I have an estimate of ten miles of tracks and 60 acres of land in the aggregate which I think would not be too high an estimate. Reckoning the cost of the side track at $5,000 a mile, and the land at $5,000 per acre, the actual cost would be $350,000. The interest at 5 per cent., to say nothing of the cost of repairs, amounts to $17,500 per annum.

There are minor items such as lighting and heating of the shops, fire insurance on both shops and cars, which, in the aggregate amounts to large sums, but which are distributed through the accounts in such a way that it is not easy to marshal them and therefore in this calculation, we make no account of them.

The entire annual burden of these major items, amount to $853,-862.56. The Chicago Great Western Company collected from other companies during the year for the use of its freight cars while on their lines, in excess of the amount which it paid to other companies for the use of their freight cars on its lines the sum of $163,-
851 141.14, which being deducted leaves the aggregate burden upon the freight business of the Chicago Great Western, for the use of its own freight cars during the fiscal year ending June, 1905, $690,721.42.

The mileage of loaded and empty freight cars of all classes owned by the company and other railways, after deducting the miles run by private car lines, amounted to 56,705,351 car miles. Dividing this quantity into the total burden, $690,721.42, makes the actual cost per freight car mile one and 23/100 cents for the use, depreciation and repairs of its own cars against the one cent and one and 1/10 cents paid to the packers for the use, depreciation and repairs of refrigerator cars.

This extraordinary result is rendered more extraordinary by the fact that the average cost of a railway car is $563.86. (I am speaking of the Great Western cars, the average cost of our equipment) is $563.86, while the average cost of refrigerator cars is about $1200. The high per mile cost of the use of railway cars is the result of the small mileage which such cars make under existing conditions, averaging about 22 miles per day of 24 hours. There are other burdens upon the transportation of live stock which do not pertain to transportation of packing
852 house products. Live stock is loaded to be delivered at the market before the close of the market hours. If, for any reason which can by any means be construed as the fault of the company, the stock is not delivered before the closing of market hours, and the market declines the next day, a claim for damages is made against the Railway Company. The damages paid on this account during the fiscal year of 1905 by the Chicago Great Western Company amounted to $24,366.45, equal to an average of $1.61 per car. The Railway Company on this through live stock business pays for loading the cars at the stock yards on the Missouri River, which constitutes, a burden on the live stock business of from 50 cents to $1.00 per car without any corresponding burden on the

packing house business as the refrigerator cars are loaded and unloaded without expense to the Railway Company.

The Railway Company is also compelled to clean live stock cars at an expense of from 50 cents to a dollar per car without any corresponding burden upon the packing house product business, as the refrigerator cars are cleaned by their owners.

During the hot weather the product has to be reiced once in transit, but the expense is paid by the shipper. During the hot weather the live stock is sprayed with cold water several times in transit, the whole expense of which is paid by the carrier.

853 It is difficult to state the exact cost, but 25 cents per car is probably a close approximation.

In addition, in the shipment of live stock, the shipper is entitled to free transportation for one passenger for each two car loads shipped, from the point of shipment to Chicago on the train which carries the stock, and free return tickets on first-class passenger trains, and estimating the value at one-half regular rates, it would amount to $6.50 per car.

The principal burdens per car upon the through shipments from market town to market town, which are not alike on live stock and their products, can now be marshalled on the basis of a 500 mile haul from the Missouri River to Chicago, as follows:

Use of car, Cattle $6.15, Hogs $6.15, Packing House products, $5.50, Fresh Meat $5.50. Damage on account of delay, Cattle $1.61, Hogs $1.61. Packing House product nothing, Fresh meats nothing. Loading, average, cattle, 75 cents, hogs 75 cents, packing house product nothing, fresh meat nothing.

Cleaning cars, average; cattle 75 cents, hogs 75 cents. Packing house product nothing, fresh meats nothing.

Icing and spraying: cattle 25 cents, hogs 25 cents. Packing house products nothing, fresh meat nothing.

854

Passenger service: cattle $6.50, hogs, $6.50. Packing House product nothing, fresh meat nothing.

Total, cattle $16.01, hogs $16.01. Packing House products $5.50, fresh meat $5.50.

As most of the above class of cars must be returned empty, it is perhaps fair to add the return use of the car and mileage. Cattle, $6.15, hogs $6.15, packing house products $5.50, fresh meat $5.50, making a grand total of $22.16 for cattle, $22.16 for hogs, $11.00 for packing house products and $11.00 for fresh meats.

It has already been stated that the average rate per hundred weight on cattle is 18 cents, on hogs 19½, and on their product is 20 cents, and the aggregate of the unequal burden is $22.16 per car on live stock and $11.00 per car on their product.

I now testify that the average pay load on the Chicago Great Western Railway, of cattle, is 21,513 pounds, of hogs, 16,636, and the average weight of the Chicago Great Western stock cars is 27,500 pounds. The average pay load of packing house products is 31,632 pounds of fresh meats, 22,414, and the average weight of refrigerator cars in which they are hauled, including non-paying ice,

is 41,000 pounds. Based on these figures, the weight hauled
855 and revenue per car received, the net rate per hundred weight received for hauling the load and the car, is found to be as follows:

Pay load, weight of cattle, 21,513 pounds, revenue $38.72. Hogs, pay load, $16,636 pounds, revenue, $32.02. Packing house product, pay load, 31,632 pounds, revenue $63.26. Fresh meat, pay load, 22,414 pounds, revenue, $44.82.

Weight of car, cattle, 27,500, revenue nothing. Hogs 27,500, revenue nothing. Packing house product, 41,000, revenue nothing. Fresh meat, 41,000 pounds, revenue nothing. Total weight of cattle, 49,013. That is the total weight, the whole thing, including the pay load and the car. Total revenue received is, $38.72. On hogs, the total weight hauled is 44,136 pounds, and the total revenue received $32.02. Packing house product, the total weight hauled is, 72,632 pounds; the revenue is $63.26. Fresh meats, the total weight hauled is 63,414 pounds, and the total revenue is $44.82.

Now, deducting from these various revenues the unequal burdens as above, $22.16 on cattle, $22.16 on hogs, and $11.00 on packing house products, and $11.00 on fresh meat, leaves the total weight hauled and net revenue per car received for the actual haul-
856 ing: Cattle, 49,013, revenue, $16.56; hogs, 44,136 pounds, revenue, $9.86. Packing house products 72,632 pounds, net revenue, $52.26. Fresh meats, 63,414 pounds, net revenue $33.82. Now, then, divide that net revenue by the number of pounds hauled and that will give the net rate per hundred weight received upon the total pounds hauled. Now, the net revenue received per hundred weight on cattle is three and thirty-nine hundredths cents. On hogs it is two and twenty-four hundredths cents. On packing house products seven and 19/100ths cents; on fresh meats five three-tenths cents.

It is admitted that the analysis shows that, based on the cost of mileage, the tariff rate on fresh meat should be higher than the tariff on packing house products to be strictly and mathematically correct, but in making the contract which has controlled the tariff rates on packing house products and fresh meats for some years, and will control them for some years to come (until the contract expires) in the haphazard by-guess way in which rates are usually made, a uniform rate of 20 cents was made on both products. As the tariff rates per hundred weight on the live stock are less than the tariff rates per hundred weight on the product, and as the analysis shows that the rates received for the one service, for the one service which is a line in both, the simple hauling of the live stock from
857 market to market, is materially less than the rates received for hauling the product and as this is the only principle which this action was brought to establish and enforce, these facts should entitle the case to be dismissed.

Up to this point I have considered only the relation which actually exists, based on the cost of the mileage between the division of the rate on live stock and the division of the rate on packing house products which are made between the railways which haul the ani-

mals into the markets on the Missouri River and the railways which transport the live stock and their product from the markets on the Missouri River to Chicago.

As has been pointed out, these are not rates but divisions of rates made by the railways as between themselves. In order to make symmetrical tariff rates possible on commodities transported over two or more lines and in their nature the part of the rate which the railway east of the river accepts, should be less than the full or local rates for the same distance.

858 The local rate, meaning by local rate the rate charged on animals that are picked up at local stations and hauled to Chicago, from the Missouri River to Chicago, 500 miles, is alike on both cattle and hogs, 23½ cents per hundred weight. There are no similar local rates.

The COURT:

Q. What do you say the rate actually used was, 20 cents or less than 20 cents?

A. I did not catch that.

Q. In your figures there, you say the rate had been less than that?

A. The proportional rates.

Q. Then are the proportionate rates actually used?

A. The proportional rates—the proportion of the rate from points west of the river. This is the local rate.

The COURT: I understand.

Mr. SEVERANCE:

Q. That obtains at the Missouri River and for a zone of about 150 miles this side, doesn't it, Mr. Stickney?

A. There are no similar local rates on the products of animals, because products are not picked up from station to station. Hence, it is impossible to compare local rates on animals with local rates on products of animals. For reasons which have been stated the optional rate should be lower than the local rate. Hence, the bare local rate on live stock with a divisional rate on the product,

859 would seem evidently unfair. But in this case it is easy to show that the local rate on live stock, wherever higher per hundred rate than the division of the rate on packing house products, is, as a matter of fact, based on the cost of hauling lower than the packing house rate. And I will state that all of the special burdens which have been enumerated as applying to live stock shipments from market to market apply to local shipments, except to cars at the stock yards at the Missouri River, which was given at 75 cents. Deducting this 75 cents from the total burden, leaves as the burdens which have been accumulated on live stock, $21.41 per car.

In addition the Railway Company is obliged to furnish stock pens at each station where stock is loaded, for no other purpose than the shipment of live stock. These stock pens represent in the aggregate a very large investment, and the interest on their cost, and the cost of repairs is an additional burden peculiar to the local shipment of live stock. It is not easy to fish out from the voluminous

construction accounts the actual cost of these stock pens, but I happen to have data which gives a practical basis for such an estimate.

In 1903 I built a line from Ft. Dodge, Iowa, to Council Bluffs, a distance of 133 miles, on which 22 stock pens were built, and
860 the actual cost was separated in the construction account. The actual cost of these 22 pens was $31,284.88, an average of $1,422.04 each. This does not include the cost of paving the floors, which will have to be done later at an average cost of probably a thousand dollars each, an expenditure which the Company has already made on many of its older pens.

The Chicago Great Western system has 240 stations where there are stock pens. At an average cost of $1422.04 each, without considering the cost of paving such floors as have already been paved, the aggregate investment would be $341,389.60. Five per cent. interest on this amount and 5 per cent. for renewals and repairs would amount to $34,128.96 per annum, or upon shipments during the year 1905 of 15,134 cars, would amount to $2.25 per car. In addition these stock pens have to be periodically cleaned by the Railroad Company, and stock cars have to be set practically one at a time to the pens to be loaded, which delays trains and adds materially to the cost of transportation. It is impossible to state how much, but a low estimate would be 25 cents total special burdens——

Q. Twenty-five cents per car?

A. Per car, total special burdens on live stock shipments—on local shipments of live stock, $23.91 per car.

Now, an analysis of the divisional rate shows that the
861 twenty cent rate on the products of animals after deducting the burdens leaves a rate of 7.19 cents per hundred rate for simply hauling the load, plus the weight of the car. Evidently a rate on cattle which, after deducting the burdens, would give the same rate 7.19 cents per hundred weight for simply hauling the load of cattle plus the car, would be the mathematical equivalent of the 20 cent product rate. The average weight of a car of cattle being 21,513 pounds, the weight of the car being 27,500, the two together would weigh 49,013 pounds, which at 7.19 per hundred weight would amount to $35.24. Add to this the special burdens, $23.19, would make the revenue required per car of $59.15, which must be collected on the 21,513 pounds of cattle constituting the load, equal to 27.5 cents per hundred weight, which is 4 cents more than the local weight on cattle. Applying the same mathematical process to the hog rate, it would be equivalent to the 20 cent product rate, and would be 33.5 per hundred weight, which is 10 cents more than the local rate on hogs.

If the comparison is made with the lower rate of fresh meat, which an analysis shows the 20 cent product rate gives on shipments of fresh beef, 5.3 cents, instead of 7.19, the mathematical equivalent of the lower rate is 23.19 cents on cattle, and 28.43 on hogs.

The Interstate Commerce Commission in the decision of
862 this and other cases seems to think that from supernatural reasons which they are unable to understand or explain in

all cases the manufactured products of all material should bear a higher rate per hundred weight than the raw material from which it is manufactured. As a matter of fact, the manufacturing of many materials produces a product more bulky which makes a car load less in proportion to the weight of the car than a carload of the raw material. When such is the result based on the cost of acreage, the manufactured article should bear a higher rate per hundred weight than the raw material. Such is usually the case when say iron is manufactured into machinery. But when pig iron is manufactured into bar iron or rails, the bulk is not increased, and such a supposed rule should not obtain. So, when live stock is changed into its products, the bulk is not increased, but, in fact, is decreased, and consequently the product should bear a lower rate per hundred weight based on the cost of carriage, than the live stock.

The relative rates between the raw material and the manufactured product, based on the cost of carriage, is a problem of facts and pure mathematics, and there is nothing occult or supernatural pertaining to the problem.

I have written in here a little something which is not exactly pertinent——

Mr. SEVERANCE: I guess the Court won't mind if you read it.

The COURT: Go ahead.

863 The WITNESS: It is unfortunate that the men who make a tariff of rates are not mathematicians instead of fairly good guessers. They guess that if one rate is so much, another rate, in order to be relative, should be about so much. If the engineers who build railways should guess at the elevations of the grades at different stations the same as freight agents guess at the elevation of rates of such stations, it would be as impossible to run trains over the road as it is now to run a freight business on tariff rates.

I desire to go on record as saying that in my opinion it is entirely possible to construct a tariff mathematically on the basis of adding to terminal expenses, the special burden to the class of shipments, practically constant quantities for the cost of hauling, which would be symmetrical and equitable and satisfactory, both to the railways and to the people; and that such schedules of rates could be printed in a form which would be so easily understood that any man of ordinary ability by an inspection of the schedules could tell for himself the local rate upon any shipment which he might desire to make.

The present Interstate law requires such schedules to be made by the railways, and if the railways fail to make such schedules the law requires the Interstate Commerce Commission to pre-
864 scribe the form and compels the railways to adopt the form thus prescribed. But in this respect both the railways and the commission have failed to comply with the law.

The rate of speed at which freight must be moved is an important element affecting the cost of transportation. But as the Chicago Great Western road's live stock and products are generally carried in the same train, generally speaking, practically the same rate of

speed is required in the transportation of live stock and its products, and it is not a factor in this analysis.

The next question is, do the rates on live stock and its products, as now adjusted, discriminate in favor of the Western markets as against the Chicago markets? The following facts in respect to the movement of live stock on the Chicago Great Western Railway constitute evidence that they do not discriminate against Chicago.

The movement of local and through live stock during the fiscal year ending June, 1905, was 15,134 cars. From stations within 150 miles of St. Paul and more than 300 miles from Chicago, 1023 cars were hauled to St. Paul, and 1425 to Chicago.

Mr. DAWES: Not 1400 but 14,000.

The WITNESS: 1400.

The COURT: Read that over again.

Mr. SEVERANCE: The whole business is 15,000.

865 The WITNESS: The total live stock amounted to 15,000. Now, then, the amount that originated at stations within 150 miles of St. Paul, and more than 300 miles from Chicago, 1023 cars went to St. Paul and 1425 went to Chicago, from that territory, making a total of 2448 cars that originated in that territory.

From stations within 150 miles of Omaha, and more than 350 miles of Chicago, 1035 went to Omaha, and 768 went to Chicago, making a total of 1803 that originated within that territory.

From stations within 150 miles of St. Joseph and more than 372 miles from Chicago, 2735 cars went to St. Joseph, and 415 cars went to Chicago, making a total of 3150 cars originating in that territory.

From stations within 150 miles of Kansas City and more than 440 miles from Chicago, 105 cars went to Kansas City, and 164 went to Chicago, making 269 cars originating there.

From all other stations, 25 cars went to St. Paul, 3 went to Omaha, 149 went to St. Joseph, 217 to Kansas City, and 7,070 to Chicago, making total shipments to St. Paul 1048 cars; to Omaha, 1038 cars; to St. Joseph 1084 cars; to Kansas City, 322 cars; to Chicago, 9,842 cars, making a grand total of 15,134 cars.

866 Of the percentage of the whole, 69 per cent. went to St. Paul, 6.9 went to Omaha, 19 per cent. went to St. Joseph, 2.1 went to Kansas City and 65.1 went to Chicago.

The COURT:

Q. That is, of those within 150 miles of the Missouri River?

Mr. SEVERANCE: That is the whole system.

The WITNESS: We have one branch goes up to St. Paul, another goes out to Omaha, and another goes down to Kansas City and St. Joe, and the total shipments on the whole road were 15,000 cars, of which 6.9 per cent. originating within 150 miles of St. Paul went to St. Paul, and 6.9 per cent. originating within 150 miles of Omaha, went to Omaha.

The COURT: That also includes 65 per cent. that came to Chicago. Is that within the area of 150 miles from those other points?

The WITNESS: 1425 cars originated within 150 miles of St. Paul, and 798 cars originated within 150 miles of Omaha.

Mr. SEVERANCE: 768.

The WITNESS: 415 cars originated within 150 miles of St. Joe, and 164 cars within 150 miles of Kansas City, and the balance, 7,070 cars, came from the rest of the road.

Mr. SEVERANCE: You did not read that table of mileage for loaded cars, Mr. Stickney.

The WITNESS: The mileage of loaded cars to St. Paul was 68163; to Omaha, 43,400; to St. Joe, 178,464, to Kansas City,
867 80,953; to Chicago, 2,597,216. The average distance the stuff was hauled to St. Paul was 66 miles; to Omaha, 43 miles; to St. Joe, 62 miles; to Kansas City, 250 miles; to Chicago, 263 miles.

Q. There were only 105 cars left at Kansas City?

A. That is all. The following table shows the actual through shipments from market to market: From South St. Paul we shipped three cars to Omaha—that is, from stock yards to stock yards—33 cars to St. Joseph, 15 to Kansas City, 1400 to Chicago. From Kansas City, 1 car went to St. Paul, 20 cars to St. Joseph and 14 to Chicago. Thirty-five cars was all we handled in the year of those through shipments from Kansas City in any way. From St. Joseph, 2 cars went to Kansas City, and 8 to Chicago, making a total of 10. From Omaha, 14 went to St. Paul, 3 to Kansas City and 24 to Chicago, making 41.

The total of these through shipments to St. Paul was, 15 cars; to Omaha, 3 cars; to St. Joe, 53 cars; to Kansas City, 20 cars; to Chicago, 1446 cars; total 1537 cars.

The mileage of loaded cars, was, 3409 to St. Paul; 1044 to Omaha; 16,837 to St. Paul; 10,054 to Kansas City; 612,686 to Chicago. Average distance each load was hauled, to St. Paul, 227 miles; to Omaha, 348 miles; to St. Joseph, 318 miles; to Kansas City, 503 miles; to Chicago, 424 miles. That is all.

868 Mr. SEVERANCE: You may examine, Mr. Cowan.

Mr. COWAN: Mr. Stickney, are you going to be here during the day?

The WITNESS: Yes, sir, I expect to be here today and tomorrow.

Mr. COWAN: If I could have the opportunity of looking this over and preparing a few questions, it would save a good deal of time.

The COURT: That will be all right.

Mr. COWAN: There are some explanations, and a few questions only, and if Mr. Stickney will name an hour that is convenient for him to appear in court again——

The WITNESS: I will suit your convenience.

Mr. SEVERANCE: He can just as well be back here at 2 o'clock.

The WITNESS: That won't give him time enough.

The COURT: Come back here tomorrow morning.

Mr. COWAN: That will suit me a great deal better.

Mr. SEVERANCE: Would any of the other counsel like to ask Mr. Stickney any questions on that?

Mr. COWAN: Mr. Stickney, could you furnish me a copy of your

statement before the Commission? Do you happen to have any copies of it?

Mr. SEVERANCE: I have a copy. I will let you have it.

The COURT: Was Mr. Stickney before the Commission in this same case?

869 Mr. SEVERANCE: Yes, sir.

Cross-examination by Mr. BAXTER:

Q. Mr. Stickney, I note that you say: "I desire to go on record as saying that in my opinion it is entirely possible to construct a tariff mathematically on the basis of adding to the terminal expenses the special burdens of each class of shipment, practically constant quantities for the cost of hauling, which would be symmetrical and equitable and satisfactory both to the railways and to the people." Now, suppose that the calculation which you have suggested should show that the rate on any commodity, I do not care what it is, to Kansas City, or to Chicago, ought to be 20 cents per hundred pounds, and suppose the man who produces that product, whatever it may be, or manufactures it, says to you: "I have no doubt Mr. Stickney, but what your rate is fairly based upon your cost of service, but my profit in the manufacture of this product will not allow me and will not justify me in paying your rate of 20 cents per hundred pounds, and you must either accept a less rate than 20 cents per hundred pounds, or I cannot ship my product over your road." What adjustment would you make there?

A. Well, you would have to—he could not ship.

Q. Now, then, suppose after making your calculation and

870 finding that the rate——

A. That is, if he told the truth he could not ship.

Q. Of course I am assuming that he did tell the truth.

A. That is always important in these matters.

Q. I am assuming, in the first place, that you told the truth that the rate ought to be 20 cents based on the cost to you, and then I am assuming that he told the truth when he said that at that rate he could not afford to ship his product. That product would be excluded from transportation would it, Mr. Stickney?

A. Would be excluded from transportation for that particular point where there was a 20 cent rate.

Q. Now, then, suppose a competing carrier running from Kansas City to Chicago says to that producer: "Mr. Stickney's mathematical rate is 20 cents per hundred pounds, and I have no doubt but that has been correctly arrived at, but I will carry that product for you at 15 cents per hundred pounds," which one of the roads would get the transportation, you or your rival?

A. My rival would not get it if I knew he made that proposition, because I would do the same thing.

Q. Whether you did it or whether he did it, the theoretical mathematical rate would give way to the commercial necessities of the problem, wouldn't it?

A. Well, if you call cutting rates a commercial necessity,
871 why it would. I do not know whether it is or not. That rather involves the whole question.

Mr. COWAN: At that point I will ask you one question, Mr. Stickney, in view of Judge Baxter's question.

Q. Suppose, in his supposed case, that also this was a new concern starting in or about to start in the manufacture, that there was no published rate, and that in neither case was there a proposition to cut the rate, then do you think it would be reasonable to fix the rate on your mathematical estimate based on a cost of service, when to do so would prevent the establishment and carrying on of the business at that particular point?

A. Well, when I was a boy I used to read the New York Tribune. It was a sort of a bible in the family where I was brought up and it had propositions of that kind about establishing infant industries in the United States by the use of a tariff which would only last as long as those industries needed it, and I was a rather enthusiastic supporter of that doctrine; but with more mature years I have learned to doubt it somewhat. It is a question of policy, of course.

The COURT:

Q. Wouldn't you be interested in trying to build up trade on your line so that in the future you could get business?

A. I am not at all certain that the rates that are made
872 ostensibly for that purpose have resulted in building up industries. I am not at all certain of that. The most common illustration is some cheap article like stone. Now, a man has a stone quarry out 100 miles on my road, and a stone quarry out 100 miles on some other road, say, St. Paul, for illustration. The price of stone in St. Paul is largely made up of the bare cost of getting it out plus the freight. Well, when that is the case, why, if you want to establish another stone quarry 200 miles away to knock down and compete with this other one 100 miles away, you have got to make the rate for 200 miles the same as that 100 mile rate. The only question is whether that is sound policy, and whether it results in building up—it might open that quarry there at 200 miles, but whatever he sold here at the same rate that the other two fellows would sell, it is selling stuff that has cost more days work, if you measure your price by days work, than the other fellow's has cost.

Q. Do you think the proper way to fix a rate is to determine what it costs you and put a fair profit on it?

A. All these statements here I have qualified by saying, based on the cost of carriage. If you are going to base everything—my own opinion is all kinds of things may enter into the question of making
873 rates. The Interstate Commerce Commission in this case and in a great many other cases that they have decided, have based everything on the cost of carriage. Well, when you do that, you are confined to that way of making rates.

Q. Do you think that is the best way to do it? I understood you so from your statement?

A. I think, generally speaking, that is so, but now I do not mean

that every commodity should bear the same rate per hundred weight. Take coal: coal is a prime necessity and it moves cheaply. You must establish on that a rate that it will move at, but as between the—you should build up your tariff in such a way that one place don't get a material advantage over another—you understand what I mean—but when you come to take products that would move at a much higher rate, my own idea is that the proper rate to be made is a rate which will allow the stuff to move?

Q. Providing that gives you a profit?

A. You know there are a good many different costs. After we have got a volume of business—say, take the Great Western Road, we have got a volume of business now. Add a few hundred tons to that, or a few thousand tons to that, and it would not increase our interest acount at all, it would not increase our general office force at all, it would not increase—there are a great many items of expense——

Q. It would not increase your profit?

874 A. —that would not increase. We could haul them at the average price and still be better off for hauling it than we would not to haul it.

Q. How do you arrive at this rate on dressed beef? Didn't you give that as what it cost you, adding the profit?

A. No, the rates were not made that way, the dressed meats were not. We had been in business for eight or ten years, I guess,—longer than that,—hauling dressed meats, and the way the rates were made a packer would come around and say: "Well, now, Mr. Great Western Road, if you want to haul any of that dressed meat, you have got to"—they say they are very fond of you and they will give it to you in preference to anybody else at the same price, but you have got to make the same price. "Well, what is the price? The tariff rate is 23 cents, isn't it? What price have we got to make to haul it?" "Well, we do not want to make a price on your stuff. What price will you haul it for?" "Well, the tariff rate is 23 cents. Would 20 cents do?" "No, no; oh, no, not 20 cents." "Well, will 18 cents do?" "Oh, no, no." "Well, what rate will do?" "Well, we can get it hauled for 16 cents. If you want any of it at that price you can have it." Well, we generally take it. That is the way the rates were made, by bargaining. It was all billed at 23 cents, and then if the rate agreed upon was 16 cents, why, it was re-

875 bated.

It went along that way for a great many years, and finally after one of these—I have forgotten whether it was the Elkins' law or what law it was passed, the railroads had sort of a spasm, and they wanted to put up the rate. I think it was one of the decisions of the Interstate Commerce Commission in the Alton case that the rate on packing house products per hundred pounds must be higher than the live stock rate, so they wanted to put up the rate and they were afraid to make rebates, and so forth, and the packers came around and made the proposition that they would give us 20 cents per hundred to Chicago, and 18½ cents per hundred for through business, and give us a certain percentage of their output every

month—not every year but every month—so that we had a steady quantity all the time, provided we would put in a tariff of that kind and keep it in force for seven years, and that is the way the tariff was made. We knew the rates were more than we ever got before.

Q. Is it true that they pay no damage at all on dressed meats, meat products?

A. No, it would average about a mill a ton.

Q. I notice some of your figures there you put amount of damage to live stock a certain amount of damages and nothing on dressed meats?

876 Mr. DAWES: That was for delay missing the market.

The WITNESS: That was for delay, missing the market.

The COURT:

Q. Isn't it true that the Railroad Companies have in the past paid quite a large amount of damages on dressed meats, packing house products?

A. Paid no damages.

The COURT: You may not know, Mr. Dawes, but maybe this man does know.

A. I am speaking now for the Great Western to what I know. We pay nothing for delays. We have never paid anything for delays. If we wreck a train and the stuff is spilled outside, we pay for the damage the same as if we wrecked a live stock train we pay the damage to the live stock.

Q. Haven't these men, these packers, been bringing claims to you for damages of any kind or character?

A. For delays?

Q. Yes, or anything?

A. Nothing except wrecks.

Q. Did you ever hear of them bringing them to any other Railroad Company?

A. No, I don't remember of it.

Q. Isn't that the way the Railroad Companies pay a great many rebates and have been doing it since that injunction?

A. I do not know what they have been doing since then, but in the old times when we were paying rebates on packing house products, we did not hunt around for any excuse. We just paid them, no pretense.

877 Q. Are you sure about the details that it was not done that way on your road?

A. Yes, sir.

Q. You don't want to speak for anybody else?

A. No, sir.

The COURT: He is wrong, in my judgment, as to the eastern roads, I don't know about the western.

Mr. SEVERANCE: He does not pretend to speak for any road but his own.

Mr. DAWES: If your Honor please, I understood the witnesses in this case to testify that there had been no claim made by the packers for years on account of delay in the product. I so understood Mr.

Crosby to testify in behalf of our road. If your Honor has any doubt about that particular question with reference to the roads here——

The COURT: No, I have no doubt they testified that way, but I want them to be sure that they know.

Mr. DAWES: I understood they testified with due solemnity. I should like to have the privilege of recalling Mr. Crosby, if——

The COURT: No, I know what they have all testified to.

Mr. DAWES: I thought possible your Honor thinks they might have been under a misapprehension.

The COURT: Yes.

Mr. SEVERANCE: Your Honor will remember that they testified that there have been no claims presented for delays such as
878 are presented in the case of live stock. They said there were cases where they paid claims arising from lack of refrigeration. For instance, if a car was laid out somewhere by a wreck, or delayed in some way and could not be supplied with ice at a station, then by reason of lack of refrigeration it was the fault of the railroad company and claims were presented, but not for delays.

The COURT: It would not cut much figure here unless they were actual damages. If they paid out rebates, I do not think that would cut any figure.

The WITNESS: The Great Western Road does not give any rebates from these tariffs, they are not asked.

The COURT: I should think not on this contract.

Mr. SEVERANCE: Not since that injunction, they have not paid a rebate.

Mr. JEFFRIES:

Q. In a case a car of live stock was tipped over and a car of dressed meat was tipped over, which do you think would involve the largest money damage to the railroad?

A. You cannot speak of individual cases. Sometimes a wreck of a car of packing house product will take place and there will be very little damage. Other times, it is practically pretty near the whole of it, and it is just so with all wrecks. A wreck sometimes of live stock will occur and you will be surprised how little damage
879 there is. Other times there is tremendous damage. Just so with individuals on a passenger train, you know. Sometimes you will have a wreck and you would think that every passenger in it ought to be killed, and for some reason or other there is very little damage done.

Q. Taking the average of live stock in wrecks, and dressed meat, would you say there was more damage done in the live stock, or in the case of dressed meats?

A. I should hate to—that is a matter that I intended to look through our accounts and get the actual facts on but I did not have time. Our accounts are not kept in a way that is easy to find it out and get the details of such damage. Live stock is liable to be damaged without a wreck. The mere bumping of a train is liable to throw down some of the animals and do damage, and I should think

the number of claims for damage to live stock would be much larger than the number of claims for the product. But I am unable to—I have no data to express an opinion as to the gross amount of those things.

Recess until 2 o'clock p. m. of the same day, Monday, September 25, 1905.

880 SEPTEMBER 25, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon THOMAS D. FOSTER, was called and sworn as a witness on behalf of the defendants and testified as follows:

Direct examination by Mr. SEVERANCE:

The COURT: Where is Mr. Stickney?
Mr. SEVERANCE: He was excused until to-morrow morning, your Honor.
The COURT: Well, I mean to call another witness.

Mr. SEVERANCE:

Q. What is your full name?
A. Thomas D. Foster.
Q. Where do you live?
A. Ottumwa, Iowa.
Q. What is your business?
A. Pork-packer.
Q. What is the name of your firm?
A. John Morrell & Company Limited.
Q. What did you state was the name of your firm?
A. John Morrell & Company, Limited.
Q. How long have you been in business w-th that company?
A. Forty years.
881 Q. What is the rate on packing house products and dressed beef from Ottumwa to Chicago?
A. We are not shippers of dressed beef.
Q. Only pork?
A. Only pork products.
Q. What is your rate on that?
A. At this time, 16 cents.
Q. How long has it been 16 cents?
A. I think since last March or April.
Q. Was that reduced at the same time that the rate was reduced to Cedar Rapids or from Cedar Rapids?
Q. Yes sir.
Q. Are you familiar with the rates into Ottumwa from the surrounding country from which you draw your supplies?
A. Yes sir.
Q. From what region do you draw your supplies of hogs?

A. Largely from 175 miles west, 60 or 80 miles north and 120 miles south and 50 miles east.

Q. What are the rates on packing house products from Ottumwa to Chicago?

A. At this time, 16 cents.

Q. When you say you are familiar with the rates from the surrounding countries into Ottumwa—you say you are, don't you?

A. Yes sir.

Q. And it is the sum of the rates on hogs into Ottumwa added to the rate on the product to Chicago from Ottumwa, compared with the rate on the live stock from the point of origin direct through to Chicago?

882 A. In either case it is a little more, and in some cases as much as ten cents more.

Q. As much as ten cents more?

A. Yes sir.

Q. From what place? That is you say that the sum of the rates on the hogs into Ottumwa and the product from there to Chicago is in all cases higher than the through rate on the hogs from the point of origin to Chicago and in some cases as much as ten cents more?

A. Yes sir.

Q. From what place is it as much as ten cents more, do you remember?

A. Well, down on the Milwaukee road near Kansas City and the Rock Island Road near Kansas City.

Q. What is the annual output of your company?

A. Last year about 125,000,000 pounds of packing house products.

Q. How many people do you employ?

A. It varies from 900 to 1300 according to the season of the year.

Q. From what points do you ship in the casings or barrels or boxes in which your product is shipped out?

A. The barrels come very largely through the Peoria gate-way. The boxes, the lumber comes very largely from Northwestern Wisconsin.

Q. How does the weight of the product that you ship out when added to the casings, barrels or boxes, in which it is placed for shipment, compare with the weight of the hogs coming into your

883 plant?

A. The weight of the product shipped out including the packages amounts to 115 to 120 per cent. of the weight of the hogs shipped in.

Q. If you add to this sum the product, and the packages, the weight of the materials and packages shipped in, that are again shipped out, how does it compare with the weight on the hogs shipped in?

A. I think I scarcely understand that.

Q. You say you ship in your barrels through the Peoria gate-way?

A. Yes sir.

Q. And the lumber for your boxes came from Wisconsin?

A. Yes sir.

Q. If you add the weight of those packages and that lumber to the

outweight of your factory, how does that result compare with the weight of the hogs shipped into your factory?

A. The output of 125,000,000, of 125,000,000 pounds, including the packages, Mr. Severance, and the supplies that go to cover the meat and cure the meat and take care of the meat.

Q. So when you spoke of 125 per cent.——

A. 125,000,000.

Q. You spoke of a per cent. a moment ago.

A. I beg pardon?

Q. You spoke of a percentage a moment ago.

884 A. Yes sir, the percentage includes the rate of the product shipped out and the supplies shipped in, together makes 115 to 120 per cent. of the gross weight of the hogs received but that does not include coal?

Q. That does not include coal?

A. No sir.

Q. Where do you get the coal?

A. We get coal from the surrounding counties.

Q. That does not come from Illinois?

A. No sir.

Q. You have to ship in a good deal of salt, don't you?

A. Yes sir.

Q. Where does that come from?

A. That comes very largely from Michigan, New York State and Liverpool and a portion of which comes through Chicago and a portion through New Orleans and St. Louis.

Q. In what markets do you sell your product?

A. Well, we pretty thoroughly cover the United States and perhaps 5 per cent. of our production is marketed in Europe.

Q. Now where do you sell your products other than meat, such as fresh trimmings, fertilizer, casings, hair and so forth.

A. The fresh trimmings is marketed in Chicago and to a certain extent in the country around Ottumwa. Some of it in Boston and some in New York.

885 Q. Where is the other stuff marketed outside of the fresh trimmings?

A. Oh, the hair goes to Philadelphia. The fertilizer goes to various points in the south, and some of it goes to Norfolk, and some times to Columbia, North Carolina, and some times into Georgia.

Q. As to those products, these by products, so to speak, how are you placed as to being on an equality with Chicago?

A. Chicago has the advantage over us in that it is a market for those products, whereas Ottumwa is not a market. We are not in the same position to get the best out of the by products that the Chicago packer is.

Q. Are there any stock yards maintained at your plant?

A. Only our own private yards for receiving the stock.

Q. Is there a live stock exchange or band of commission men there that receive a commission upon the product sold to you- company?

A. No sir.

Q. From whom do you buy your stock, that is your live animals?

A. From shippers who gather up the hogs at the different stations and ship them into Ottumwa.

Q. Are the hogs shipped to Chicago from all of these stations from which you derive your supplies?

Q. Very largely. Some points that are down near the St. Louis sphere and the Kansas City sphere go to St. Louis and the Missouri river. In a very large degree the hogs are shipped to Chicago from the territory that we draw from.

886 Q. Now, Mr. Foster, what would be the effect upon your business if the rates upon live stock and upon packing house products were equalized as asked by the complainant in this case?

A. It would be very detrimental to our interests.

Q. Explain why?

A. I beg pardon?

Q. Explain to the court why?

A. Because it would give the Chicago packer and the packers in Central Illinois that much advantage over what we would enjoy if the stock, live stock was higher than provisions.

Q. You say you are already at a disadvantage in competition with Chicago?

A. Yes sir.

Q. And you compete with Chicago, do you, in the market?

A. Yes sir.

Q. And also with these points along the Missouri river?

A. Yes sir.

Q. What roads are into Ottumwa?

A. The Chicago Burlington & Quincy, The Chicago, Milwaukee & St. Paul, The Chicago Rock Island & Pacific and the Wabash.

Mr. SEVERANCE: You may cross-examine.

Cross-examination by Mr. COWAN:

Q. The Chicago & Great Western also?

A. No sir, that does not touch Ottumwa.

887 Q. Previous to the putting in of the 16 cent rate to Chicago, what rate did you pay?

A. 21 cents.

Q. Are hogs shipped in to you and offered for sale, or do you buy them at the station and contract for them before they are shipped in?

A. We buy them at our yards.

Q. Are they shipped in without any previous contracts and do you then take the chances of sale?

A. Well, not, altogether. Quite a few are shipped in without any previous contract but I should say a large proportion of them are already sold before they come in.

We issue a circular every time we make a change in the price of hogs at our yards, an- the shippers have a right and do accept prices on those circulars until another one is issued. So that, quite a number of our hogs are sold before they come in.

Q. Have you got a copy of the circular with you?

A. No sir, I have not.

Q. In what form is that issued, a postal card?

A. It is a mimeograph circular issued as we make the changes.

Q. About what are the contents of that circular?

A. We number the circular and date it and say that these prices are good until changed and then we give the different grades, pigs, hogs, weighing from 150 to 200 pounds, 230 to 260 pounds,
888 and from 260 to over that, good packers and rough packers. Each one has its own price and grade.

Q. The circular states the grade and the price?

A. Yes sir.

Q. The grade and price where?

A. At Ottumwa.

Q. If a man ships his hogs in and they fall within the grade of weight named in your circular, you pay him the price named in the circular?

A. Yes sir.

Q. Do you pay the freight?

A. We pay the freight but deduct it from his bill.

Q. It comes out of his pocket?

A. It comes out of his pocket, yes sir.

Q. How do you come to change the price? You spoke of changing the price?

A. We change the price by the changes in Chicago. The Chicago market governs our prices.

Q. How do you get that information?

A. By wire every morning.

Q. And by wire every night?

A. Well, the hog market is practically over by 10 or 11 o'clock in the forenoon.

Q. You get your wire that day and send out your circulars if you make a change?

A. Yes sir.

Q. From whom do you get your information in Chicago?

A. Well, the telegraph companies, the Western Union has
889 a live stock reporting bureau and so has the Postal Telegraph Company and we get both markets.

Q. So it comes from the reporting bureau of the telegraph companies?

A. Yes sir.

Q. Do you offer to pay the same price? For example, to-day you send out a circular after you have received your telegram. Do you offer to pay the same price that is paid in Chicago?

A. No sir.

Q. What is the difference?

A. Well, that differs very largely. Sometimes we pay the Chicago price on a certain grade of hogs that we may require. Sometimes we even pay more than the Chicago price. Then again, there will be a wider margin on the class of hogs that we are not requiring at that particular time.

Q. How is it based on the Chicago price then, if you don't send

your circular stating that you will pay so much based on the Chicago price?

A. Well, in this way. Suppose we are particularly wanting the class of hogs suitable for English meat. Chicago quotations for that class of hogs is a certain price. Now, we fix our price so as to influence a larger proportion of that class of hogs to come to our place. Now, then, suppose Chicago has its price for heavy hogs and we are not particularly seeking that kind of hogs. We make a price on that kind that has a wider margin below the Chicago price than the light hog that we require for the English trade.

890 Q. You say you sometimes pay more than the Chicago market?

A. Yes sir, we do.

Q. Why do you do that?

A. Well, so as to turn our way as many of that particular kind of hogs as we can get.

Q. So your basis is the Chicago market plus your desire for hog?

A. Very largely.

Q. How would it make any difference with you then if the freight rate on hogs were reduced 3 cents a hundred pounds?

A. Why, it would make that same difference, we would have that much more to pay for the hogs, we would have three cents more to pay for the hogs.

Q. If you don't base your prices on the Chicago prices, I don't see how that would be so.

A. Well, it is based on the Chicago prices.

Q. You pay, you pay more than the Chicago prices in some instances?

A. Sometimes, yes sir.

Q. What difference in such case—the difference in such a case would be that the rate on hogs was still 3 cents less than Chicago? That is all the difference there would be?

A. Well, we will take for argument sake that a certain grade of hog in Chicago is five cents. Now, we are wanting this class very badly and we bid 5.5. Now that will bring us so many more hogs. Now, if the shipper could ship to Chicago at 3 cents less, we would have to pay 5.8 to get the same number of hogs at the same time.

891 Q. Your idea is then that in the price you pay for hogs you get the advantage of the difference between the rate of freight to Ottumwa and the rate of freight to Chicago?

A. Yes sir. The lower the freight on live hogs, the better, of course, for the interior packer.

Mr. SEVERANCE: You mean the lower the rate into his packing house, into his town?

A. I did not catch the exact situation there.

Mr. COWAN: You were doing the talking, not I.

Mr. SEVERANCE: I don't think you understood the question. At least your answer is inconsistent with your other testimony.

(The pending question and answer were then read.)

A. I wish to correct that answer and say, the higher the rate on live hogs to Chicago the better for the packing house.

Mr. COWAN:

Q. Is your interest and the shipper's interest identical or opposite?
A. Well, I think they are identical.
Q. How could that be? If he had a lower rate on his hogs, you would have to pay him more for them, wouldn't you? That is the result of your statement?
A. Yes sir.
Q. If you had to pay him more for it he would get more money?

892 A. Yes, but we can save the shipper more money being a nearby market as compared with shipping the longer distance and taking the risk of the market.

Q. How is that, so that you make the difference in the freight rate the difference in your price?
A. Because the advantage is that we are there and make a market every day on which he can sell and know what he is doing.
Q. Well, he can do the same thing by shipping to Chicago, can't he?
A. No sir, he has to take the risk of the market in shipping to Chicago, for instance the shipper——
Q. Won't it average up——

Mr. SEVERANCE: Let him finish his answer.

A. For instance a shipper receives our circular in the morning. He knows of a certain lot of hogs and he can go out and buy those hogs and wire into Ottumwa that he sells so many hogs on such a number circular.

He knows before he ships his hogs practically what he has made on those hogs. If he ships to Chicago he has to run the risk of the market and the risk of loss in transit and the various matters that enter into the shipping of live stock.

Mr. COWAN:

Q. If the shipper thought he had the advantage of your market, why did you have to pay more than the Chicago market to get the hogs?

893 A. Because we have to cover a larger territory in order to get the hogs. The further we go away from Ottumwa the higher the price we have to pay.

Q. To what extent and how often do you pay a higher price for hogs than is paid in Chicago?
A. Not very often.
Q. As a general rule do you pay an amount less than would equal the difference in freight to your place and to Chicago?
A. I should say the average would be about that.
Q. You think that naturally, being located in a hog country you have the advantage of being able to take advantage of the difference in the freight rate, don't you?

A. No, I don't know that we have a particular advantage on the difference in freight.

Q. Well, you do if the shipper knew exactly what he was going to get at Chicago?

A. Yes, but he does not know that.

Q. Are hogs shipped from Ottumwa to Chicago?

A. How is that, sir?

Q. Are hogs shipped from Ottumwa to Chicago?

A. No.

Q. Are they shipped from stations nearby to Chicago?

A. Yes. That is within ten or twelve miles at times.

Q. Why is that?

A. They may have a different class of hogs to what we are requiring.

Q. How many hogs did you consume during the last year?

894 A. About 600,000.

Q. And the year before?

A. About the same.

Q. And the year before that?

A. There were two years there, I think probably 1901 and 1902 or 1902 and 1903 wher- the supply of hogs was very small growing out of the failure of the corn crop in 1901, during that hot year. We were not able to get as many hogs that year, neither were the packers generally.

Q. Well, your proportion of decrease was about the same as it was with other packers was it, or different?

A. Yes sir, about that time.

Q. Well, now, going back say to 1900, before that drouth, how many did you put up then?

A. Oh, we have run up as high as 700,000 or 650,000.

Q. Is it not a fact that the Cincinnati Price Current contains a statement of the number of hogs packed at your place and other packing houses in the country that is considered reliable?

A. Yes sir.

Q. How long had you been paying that 21 cent rate?

A. Well, I could not say exactly, perhaps 10 or 12 years, something like that.

Q. Were you getting any rebates out of it?

A. No sir.

Q. You were absolutely paying out that for good and forever, th-t amount of freight?

A. Yes sir, straight.

895 Q. 50 per cent. of your product, you say is exported?

A. Just about.

Q. Via what gate-ways?

A. Well, almost exclusively Chicago. We have shipped a little via St. Louis but that is infinitisimal.

Q. And that is shipped on a through shipment to New York?

A. Yes, or Boston.

Q. Well, the Atlantic seaboard?

A. Yes sir.

Q. What is the proportional rate from Ottumwa to Mississippi river?

A. On export freight?

Q. Yes?

A. In the neighborhood of five cents 5½.

Q. What is it on shipments to Cincinnati?

A. I don't know that. We ship scarcely anything to Cincinnati.

Q. Do you supply any interior points in Ohio or Indiana?

A. Very rarely in carloads.

Q. What proportion of the product of your packing house is sold locally in Chicago?

A. Perhaps ten per cent.

Q. To whom do you sell, through brokers or to wholesale grocery men?

A. We sell through our agent at the stock yards and on the Board of Trade in the usual course of board of trade transactions for Chicago delivery at the warehouse.

Q. Have you the proportional rate different to the 16 cent rate to Chicago?

A. To the seaboard?

896 Q. To Chicago?

A. No sir.

Q. When you ship through Chicago going to the seaboard, your rate is made up of the proportional to the Mississippi river plus the Mississippi river rate to New York, isn't it?

A. Yes sir.

Q. What does it cost to land your product in New York per hundred pounds?

A. Our rate is 40 cents.

Q. That is 5 cents to the river and 5 cents to the river above Chicago and 30 cents from Chicago to New York?

A. Yes sir, the Mississippi river rate is 116 per cent. of the Chicago rate.

Q. The difference between the Mississippi river rate to Chicago being 5 cents and your rate to the river 5 cents, that adds 10 cents to 30 and makes it 40?

A. Yes sir.

Q. Does that bring you in competition with the product of Chicago packers in the markets of Europe?

A. Yes sir.

Q. Does it also come in competition at Philadelphia, New York, Pittsburg, Buffalo and Boston?

A. Yes sir, where we have agencies. We have no agency in Philadelphia or Pittsburg.

Q. You have in Buffalo, New York and Boston?

A. Well, we have in New York and Boston but not in Buffalo.

Q. What percentage of product is sold in Iowa and points
897 west and south and north thereof, that is all points west of the Mississippi river?

A. Perhaps 15 or 20 per cent.

Q. Do you mean of your meat products?

A. Yes sir, of the packing house products, generally.
Q. Practically all your fertilizer is shipped to the southeast?
A. Yes sir.
Q. And that passes through the Mississippi river gateway?
A. Yes sir.
Q. And the rate on that is made up of the proportional to the Mississippi river plus the rate from there to the Atlantic or such place as you ship to?
A. I could not answer that question.
Q. Has your proportional rate to New York changed in recent years? Your proportional to the Mississippi river and from there to New York.
A. Occasionally there are cuts in the rate but it is set back again in the course of a few weeks. Take the rate generally outside of those occasional depressions, there practically has not been any change in it for a number of years.
Q. You have been paying 5 cents proportional to the Mississippi river for a great many years?
A. I think so.
Q. Have you any statement showing the proportional amount of your product which you have marketed in Chicago during each of the several years last past?
A. I have not.
898 Q. Do you market a greater amount now than you did three or four years ago?
A. I think so.
Q. Why is that?
A. On account of the lower rate on provisions into Chicago.
Q. From your place?
A. Yes sir.
Q. The rate of freight which you pay on live stock to your place does not determine the amount you charge for your meat?
A. Well, that is a hard question to answer. The packing hou-e business is not one that is made up of cost and sale. It is a matter of judgment very largely on the market. In buying, as to the time of buying live stock and the time of selling. We never figure what we have made in a day or in a week.
Q. Do you fix the price of the stuff you sell in Chicago or do you sell at the price that is current?
A. Oh, the price that is current.
Q. How is it in New York and Boston?
A. If we fix the price we would not stay long in the business.
Q. How is it in New York and Boston?
A. The same way, you take the current price.
Q. What makes the current price?
A. Demand and supply.
Q. Who of your competitors furnish the supply name them?
A. Well, all the packers. We meet them all in the market where we sell.
899 Q. Do you have in your mind what factor mainly fixes the price of hams and bacon slaughtered in Chicago?

A. I cannot say beyond the answer that I have already given, that the quantity that is offered for sale is to be considered *versus* the demand for the product. Of course, at times there are manipulations, but the finality is, how much you can make at a certain price. It is possible by a strong combination to hold the price up, but it is also possible on the part of the consumer to refuse to buy at those prices. Then the price has to go down until it meets the views of the purchaser.

Q. Do your products depend more upon the fluctuation of the market or the freight rate?

A. Well, the freight rate cuts the biggest figure.

Q. How is that?

A. The freight rate cuts the biggest figure.

Q. That is not the question that I asked you. Do your profits depend more upon the fluctuation of the market or the freight rate?

Mr. SEVERANCE: He has answered it. He said the freight rate.

A. The freight rate. It depends more upon the freight rate than the fluctuations of the market.

Mr. COWAN:

Q. Do you sell cheaper in Boston than the Chicago packer,

900 A. Sometimes we do.

Q. And sometimes you don't?

A. Sometimes we don't.

Q. You generally sell at the same price?

A. No, we don't always get the same price.

Q. Well, very close to it?

A. Generally, yes sir. That depends upon the kind of goods.

Q. What sort of hogs do you mainly pack, all sorts?

A. All grades.

Q. How much dressed meat do the hogs make per hundred pounds?

A. How much dressed meat?

Q. Suppose you did not put any of it into ham, what would the dressed carcass be?

A. The dressed hog just as it stands before it is cut up will run from 75 to 83 or 84 per cent. according to the character of the hog.

Q. That includes everything except the hair and the entrails and the blood?

A. Yes sir. The cut-up meat and cooked lard will vary from 63 for these light hogs for the English market, to 76 or 78 for well fatted hogs.

Q. What does the total product of the hog amount to in point of weight and the gross weight of the hog?

A. We will average—Our class of hog meat—in the neighborhood of 66 or 67 per cent.

Q. And the other products?

A. The further product?

Q. The other products?

A. The other product perhaps, altogether, 82 or 83 per cent.

901 Q. About 82 or 83 per cent.?

A. I should say so, yes sir, including the meat, lard and by products.

Q. You don't kill cattle and you don't know what the product of the dressed meat amounts to?

A. We kill a few cattle just for local distribution but that is not our business.

Q. You say you pay more for hogs the further away you go from Ottumwa?

A. Yes sir.

Q. And less as you get towards Ottumwa?

A. Yes sir.

Q. Are not the hogs driven in?

A. Well, that is almost a thing of the past now.

Q. Are they hauled in in wagons?

A. All hauled in. It is a very rare thing that we have a driven bunch of hogs.

Q. They haul them in in wagons, do they?

A. Yes sir.

Q. For what distance around do they haul in wagons?

A. Oh, from 6 to 10 miles and in some directions perhaps a little more.

Q. Have you an idea how many hogs you bought, that is hauled in?

A. I should say perhaps 10,000 or 12,000 a year, maybe 15,000.

Q. What proportion of your total product moves east of the Mississippi river for sale or consumption?

902 A. I should say 60 or 75 per cent.

Q. What proportion of that—I believe you said about 10 per cent. was sold in Chicago?

A. About that, I should say.

Q. And the balance of it sold to points east?

A. Yes sir.

Mr. BAXTER:

Q. You spoke of the rate of 5 cents from Ottumwa to the Mississippi river. Isn't that the proportional rate charged by the road west of the Mississippi river on shipments from Ottumwa destined to points east of the river?

A. Yes sir.

Q. It is not a local rate from Ottumwa down to the river?

A. Oh, no.

Q. You could not ship from Ottumwa down to the Mississippi river for local use there at 5 cents?

A. No sir.

Q. What would be your local rate?

A. I think probably 9 cents.

Q. How much?

A. Perhaps 9 cents.

Q. Then the through rate from Ottumwa to New York is made up of this proportional rate of 5 cents charged by the lines west of the river from Ottumwa to the river, and then a proportional rate

charged by the roads east of the river from the river on to New York, is that it?

903 A. Yes sir.

Q. You don't get a through rate made by any road west of the river, do you?

A. Not in the sense of Ottumwa being a terminal point and a fixed rate.

Q. They quote you a through rate?

A. Yes sir, they quote you a through rate.

Q. Made up of their proportion of 5 cents to the river, and the 35 cents proportional and the rates east of the river?

A. Yes sir.

Mr. COWAN:

Q. How many cars do you deliver to the railroads there per day?

A. 7 to 12, perhaps.

Q. Do you divide them up among the different roads?

A. Yes, according to the proportion of live hogs they bring in.

Q. How far is it from your packing house over to the freight depot or yards where the trains are made up where they connect with their trains that come through?

A. We are right at the yards.

Q. Do the railroad companies do the switching or do you do it?

A. We do the switching within our own yards but the railroad comes in and takes the freight out.

Q. Comes into your yards and takes the freight out?

A. And it also brings the freight in.

Q. Do you have your own cars?

A. Yes sir.

Q. What do you get for the use of the cars?

904 A. A cent and three quarters. That is a cent in some territories and three quarters of a cent a mile in others.

Q. Do they return your cars empty to you?

A. Yes sir.

Q. And they pay you on the return movement, also?

A. For what?

Q. They pay you a cent or three quarters of a cent as the case may be on the return movement as well as the going movement?

A. Yes sir.

Q. Are those packing house products that you have, put into other trains of other sorts of freight than packing house products and dressed meat?

A. I think so.

Q. Put into any sort of a train that comes along or do you have certain fast freight trains that it goes on?

A. I cannot answer that question. Our freight moves out very largely in the night and the class of train it goes on, I am not posted on.

Q. Are there any expenses or charges there at Ottumwa that you charge or collect, or any that the railroads charge to you?

A. For yardage?

Q. For all purposes in connection with this traffic?

A. We get, I think it is 75 cents a car for the loaded cars
905 that we deliver to the roads. We get nothing for the cars in.

Q. You get 75 cents switching charge for those cars that you deliver?

A. 75 cents, yes sir.

Q. Is that the only charge that is made?

A. That is the only charge.

Q. Are those cars returned there empty or do they come loaded?

A. The road has a right to load them on the return trip but of course, they always come empty into Ottumwa unless occasionally there might be a car loaded with apples or something like that for a local fruit man, but the great bulk of the cars come empty to Ottumwa.

Q. Do Chicago packers sell meat and meat products in your territory over there shipped from Chicago west?

A. No sir, that is not in the Iowa territory but they do in Illinois.

Q. Not in Iowa?

A. No sir, we have lost about 50 to 75 per cent. of our trade in Illinois from the competition of Chicago packers.

The COURT:

Q. Do you mean your sales or purchases?

A. In our sales, your Honor.

Mr. COWAN:

Q. Do you buy any hogs in Illinois?

A. I beg pardon?

Q. Do you buy any hogs in Illinois?

906 A. No.

Q. And there are none shipped to your place from Illinois?

A. No.

Q. Do you buy on the Kansas City and Omaha markets?

A. Occasionally.

Mr. BAXTER:

Q. In that portion of Illinois where you say you have lost a certain amount of your business in competition with Chicago, what is the distance from Ottumwa to that section of country and what is the distance from Chicago?

A. 100 miles from Ottumwa to 240 miles from Ottumwa and then the reverse is 40 miles from Chicago to 190 miles from Chicago. There is a territory or zone lying in between that mileage where we have lost since this change in rate, where we have lost from 60 to 75 per cent. of the trade that we formerly enjoyed.

Q. You say since this change of rate? What change of rate do you refer to?

A. Well, we formerly had a lower rate to Chicago than the hog rate. That is, we had a lower rate to Chicago on provisions than on hogs. Then the Interstate Commerce Commission changed it to an equality of the two grades of freight, that is the live stock and the packing house provisions, and from that time we lost trade in this zone that I speak of.

Q. You have had then a practical operation of this rule?

907 A. Yes sir.

Mr. DAWES: Has your packing house presented claims against railroads for delay in shipping the product?

A. Never.

Q. Your claims are limited to physical damage or injuries to the product which you ship, is that right?

A. Yes sir.

Q. I don't suppose you could testify about the custom of any packing houses in that regard?

A. No sir, I don't know.

Q. Packing house product is not shipped to a particular market, is it?

A. No sir.

Q. That is to arrive at a particular hour?

A. No sir.

Q. There is no loss to you if there is a delay, within reasonable limits, that is a reasonable loss of time in the arrival of that product?

A. No sir.

Mr. COWAN:

Q. Do you ship any of the fresh meat, do you ship hogs in the carcass, the fresh meat or only in the bacon and hams?

A. All cut up.

Q. All cut up?

A. Yes sir.

Q. It all goes as packing house product and none as fresh meat?

A. No there is some that goes as fresh meat. Quite a little loin and spare-ribs and tender loin go at a higher rate than the

908 packing house product rate. We have quite a little of that but I don't know the percentage.

Q. It don't go at a higher rate by the carload?

A. Yes sir.

Q. Have you got any tariff that shows that?

A. Well, I don't know definitely the rates, no, but I was under the impression that it did.

909 Q. Well, I hadn't heard of it before.

A. I may possibly be mistaken on that, but I was under the impression that was the case.

Q. Well, you have collected damage claims, though, on shipments, haven't you?

A. How is that?

Q. Have you collected any damage claims at all from the Railroad Companies on shipments?

A. Oh, very occasionally, at times there may be some pilfering, or a car may have been knocked around so much that the packages are all broken and the contents spilled occasionally.

Q. Or a wreck, or something of that sort?

A. Yes, but it is a very rare thing, and it practically amounts to nothing.

Mr. BAXTER:

Q. You said something about there being a higher rate on fresh meat than on regular packing house products. Didn't you mention that?

A. How is that, sir?

Q. Didn't you say something about there being a higher rate on fresh meats, tenderloins and things of that sort than you paid on the packing house products?

A. I was under the impression that there was a higher rate on that class of freight by the carload, but I may be mistaken about that.

Q. Isn't the rate on fresh meat from Chicago to New York 45 cents, and the rate on packing house products 30 cents, and the rate on live cattle 28 cents?

910 A. I did not catch that.

Q. Isn't the rate on fresh meat from Chicago to New York 45 cents, and on packing house products only 30 cents,——

A. I could not say as to that.

Mr. COWAN: I had reference in my question to Chicago, not New York.

Mr. SEVERANCE: You did not ask him that.

Mr. COWAN:

Q. I had in my mind the rate to Chicago and not the rate through to New York, when I asked you if there was a different rate. It is different if you go to New York?

A. That is what I had in mind.

Q. The proportion to the Mississippi River is the same in each case?

A. I cannot answer that.

Mr. SEVERANCE:

Q. You merely know that you pay more on the fresh meat shipped from your place to New York than you do on the packing house products?

A. Yes, sir.

A. L. EBERHART, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. What is your full name?
A. A. L. Eberhart.
911 Q. Where do you live?
A. Austin, Minnesota.
Q. What is your business?
A. Pork packing.
Q. What is the name of your firm?
A. George A. Hormell & Company.
Q. What railroads run to Austin, Minnesota?
A. The Milwaukee & St. Paul and the Great Western.
Q. How long have you been in business?
A. Do you mean the firm?
Q. Yes.
A. About fourteen years.
Q. How long have you been connected with the firm?
A. Five years,—a little over.
Q. What is your relation with the company, what is your office?
A. Secretary of the Company.
Q. What is the nature of the business conducted by that company?
A. Almost entirely the packing of pork.
Q. What is the capacity of your plant?
A. That is a rather difficult question to answer.
Q. I mean, what did your product amount to last year?
A. I have the figures—our business year ends November first, and I have the figures of the ten months on this present year. Up to September 1st the total of the outgoing shipments in carloads in local shipments, was 20,668,556 pounds.

912 Q. Now, right in that connection, I will ask you what were your shipments not including hogs, the materials for packages, and salt, and so forth?

A. Well, in that period, the total weight of our hogs in carloads was, 25,800,910 pounds, but not supplies such as coal, boxes, lumber, salt, and all that class of stuff, that amounted in carloads to 10,951,916 pounds, and local shipments, 1,840,000, making a total of supplies in of 12,791,916, or a total of incoming and outgoing freight of 33,450,472 pounds.

Q. Now, what did you say the out-going freight was?
A. The out-going total was 20,668,556.
Q. And the material added to that makes some 33,000,000?
A. 33,000,000.
Q. What is your in-shipment of hogs?
A. 25,800,910 pounds.
Q. So that, including your materials for packages and so forth coming in, and the weight of the packing house products going out, you had about 33,000,000 as against 25,000,000 in round figures of hogs shipped in?

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A. Yes, in those ten months.
Q. From what territory do you draw your percentage of hogs?
A. Well, southern Minnesota, principally, and some——
Q. And South Dakota, too?
A. Some little in South Dakota and some in northern Iowa. Our principal shipments are in the western part of southern Minnesota.

913 Q. Have you made up a table showing a list of stations together with the rates in Austin, and the rates from those stations on live stock to Chicago?
A. Yes, sir, I have such a table.

Mr. SEVERANCE: I will ask to have this marked as Exhibit 1. Eberhart's Exhibit 1. (Referring to paper produced by the witness.)

(The paper referred to was marked "Eberhart Exhibit No. 1, F. B. D.," and is in words and figures following, to-wit:)

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KNEEHART EXHIBIT NO. 1. 913

TOWNS & RATES ON HOGS, C. M. & ST. P. R. R.

TOWN. S.M.Div.to Austin.	STATE.	MILES TO AUSTIN.	ACTUAL RATE.	OUR RATE.	MILES TO ST.PAUL.	RATE TO ST.PAUL.	MILES TO CHGO.	RATE TO CHGO.
Bryant	S.D.	280	29 /2	24	359	24	632	38
Lake Preston	"	263	28 1/2	23	352	24	614	37
Howard	"	255	25	20	334	25	605	33
Madison	"	233	23	18	312	23	584	32
Oldham	"	242	24	18	321	24	604	36
Wentworth	"	226	22	18	306	22	576	32
Colman	"	218	22	18	297	22	568	32
Egan	"	208	20	16	287	20	568	32

9/14

TOWN.	STATE.	MILES.	ACTUAL.	OURS.	MILES.	RATE.	MILES.	RATE
Ylandreau	S.D.	204	19	16	283	20	554	32
Airlie	Minn.	195	18 1/2	16	274	19	545	32
Pipestone	"	189	18	16	268	18	539	32
Edgerton	"	175	18	16	254	18	525	29
Chandler	"	165	16	16	244	18	515	28
Iona Lake	"	156	17	14	235	17	506	28
Fulda	"	146	17	14	225	17	496	28
Kinbrae	"	139	17	14	218	17	490	28
Lakeffhad	"	129	16 1/2	14	209	17	471	26
Jackson	"	109	15 1/2	12	198	17	459	26
Alpha	"	104	15 1/2	12	193	17	454	26
Sherburn	"	96	15	12	185	17	447	26
Welcome	"	91	14 1/2	12	180	17	441	26
Fairmont	"	83	13 1/2	12	172	16	433	26
Granada	"	77	13	12	163	15	427	26
Huntley	"	71	12 1/2	12	157	14	421	25 1/2
Winnebago	"	66	12	12	152	14	416	25 1/2
Delavan	"	59	11	11	146	14	409	25 1/2
Easton	"	53	10 1/2	10 1/2	139	14	403	25
Good Thunder	"	68	12	12	98	14	419	26
Rapidan	"	75	12 1/2	12 1/2	92	15	425	26
Mapleton	"	61	11 1/2	11 1/2	106	14	411	26
Minnesota Lake	"	52	10 1/2	10 1/2	115	14	403	25
Wells	"	44	9 1/2	9 1/2	123	14	394	25
Alden	"	35	8 1/2	8 1/2	132	14	385	25

5-d

915.

TOWN.	STATE.	MILES.	ACTUAL.	OURS.	MILES.	RATE.	MILES.	RATE
Albert Lea	Minn.	26	7 1/2	7 1/2	119	12	375	25
Hayward	"	18	6 1/2	6 1/2	115	12	368	25
S.M.Div.East								
Houston	Minn	89	14	9	186	15	302	22
Rushford	"	78	13	9	175	15	314	24
Lanesboro	"	58	11	11	155	15	333	24
Wykoff	"	40	9	9	137	13 1/2	381	24
Spring Valley	"	33	8 1/2	8 1/2	130	12	358	24
Grand Meadow	"	23	7 1/2	7 1/2	120	12	368	25
Dexter	"	17	6 1/2	6 1/2	114	12	363	25
Brownsdale	"	9	4 1/2	4 1/2	106	12	358	25
I. & M.Div.North.								
Northfield	Minn	62	11 1/2	11 1/2	38	9	406	26
Faribault	"	48	10	10	52	9 1/2	398	26
Medford	"	39	9	9	61	10	389	26
Owatonna	"	33	8 1/2	8 1/2	67	12	383	25
Blooming Prairie	"	15	5 1/2	5 1/2	85	12	365	25
I.& M.Div.East.								
Ridgeway,Iowa		58	11	9	158	14	292	23
Decorah	Iowa	73	12 1/2	9	173	17	293	23
Cresco	"	49	10	10	149	14	300	23
Bonair	"	43	9 1/2	9 1/2	143	14	306	24
Lime Springs	"	38	9	9	138	13	311	24
Chester	"	33	8 1/2	8 1/2	133	13	316	24
Le Roy,	Minn	26	8	8	126	12	324	24

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TOWN.	STATE.	MILES.	ACTUAL.	OURS.	MILES.	RATE.	MILES.	RATE.
Tacpi,	Minn.	18	6 1/2	6 1/2	118	112	332	24
Adams	"	14	5 1/2	5 1/2	114	12	335	25
Rose Branch	"	8	4 1/2	4 1/2	108	12	342	25
Preston Branch.								
Caledonia	"	102	15 1/2	15 1/2	158	18	299	24
Mable	"	84	13 1/2	13 1/2	176	18 1/2	318	24
Canton	"	78	12 1/2	12 1/2	188	18 1/2	327	24
Harmony	"	70	12	12	190	18 1/2	332	24
Preston	"	59	11	11	201	18 1/2	342	24
I.& D.Div.East & West.								
Monona	Iowa	96	14 1/2	14 1/2	196	17	253	22
Postville	"	86	14	14	186	17	263	22 1/2
Castalia	"	80	13 1/2	13 1/2	180	17	269	22 1/2
Ossian	"	75	13	13	175	17	274	22 1/2
Calmar	"	68	12	12	168	14	281	22 1/2
Hartley	"	156	18 1/2	18 1/2	256	22 1/2	470	23 1/2
Ruthven	"	126	16 1/2	16 1/2	226	22 1/2	443	23 1/2
Cylinder	"	108	16	16	208	22	425	23 1/2
Wesley	"	80	13 1/2	13 1/2	180	18	396	23 1/2
Britt	"	70	12 1/2	9	170	17 1/2	380	23 1/2
Garner	"	60	11 1/2	9	160	17 1/2	376	23 1/2
Ventura	"	53	10 1/2	6	153	17	370	23 1/2
Clear Lake	"	48	10	6	148	16	368	23 1/2
Charles City	"	67	12	9	167	15	328	23 1/2
Rudd	"	54	10 1/2	9	154	15	340	23 1/2
Nora Springs	"	49	10	9	149	15	345	23 1/2

917.

TOWN.	STATE.	MILES.	ACTUAL.	CUTS.	MILES.	RATE.	MILES.	RATE.
I.& M.South.								
Plymouth	Iowa	31	8 1/2	8 1/2	131	15	363	24 1/2
Grafton	"	25	7 1/2	7 1/2	125	14 1/2	370	25
Carpenter	"	18	6 1/2	6 1/2	118	13 1/2	369	25
Lyle	Minn	11	5 1/2	5 1/2	111	12	361	25
Main Line North.		TOWNS & RATES ON HOGS -- C.& G.T.W.R.R.						
Kenyon,	Minn.	44	9 1/2	9 1/2	57	10	367	25
Dodge Centre	"	25	8	8	77	12	348	25
S OUT N.								
Elma	Iowa	68	12	8	126	17	289	23
Riceville		55	11	8	116	17	299	23
Sargeant	Minn.	22	7 1/2	7 1/2	86	12 1/2	334	25
Hayfield	"	16	6 1/2	6 1/2	80	12 1/2	339	25
Waltham	"	11	3	3	85	12 1/2	344	25
SOUTH ON OMAHA DIV.								
Ft.Dodge,	Iowa	130	16	16	209	18	368	23 1/2
Eagle Grove	"	94	14	14	190	17 1/2	380	23 1/2
Clarion	"	85	13 1/2	13 1/2	181	17 1/2	340	23 1/2
Belmond	"	78	12 1/2	12 1/2	170	17	352	23 1/2
Meservey	"	65	11	11	161	17	369	23 1/2
Thornton	"	59	10	9	165	16 1/2	398	23 1/2
Swaledale,	"	55	10	9	151	16 1/2	393	23 1/2
Burchinal	"	49	10	.	145	16 1/2	398	23 1/2
Manley	"	32	8 1/2	8 1/2	128	16	371	25
Meltonville	"	17	6 1/2	6 1/2	113	15	356	25

918 Q. As I understand it, Mr. Eberhart, this table, Exhibit No. 1, shows the names of the stations the number of miles from those stations respectively to Austin where your packing house is located; the rate in on the goods, the hogs, and then you have a column that is headed "Our rate" (which I will ask you to explain in a moment). This also shows the mileage from these stations to St. Paul, the rate to St. Paul, and the mileage to Chicago, and the rate to Chicago?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. And that is correctly made up, is it?

A. As far as we know, yes. sir, from the rates given us.

Q. What does this column of figures under the head "Our rate" signify?

A. Well, that is the rate that we have to pay to certain points in order to induce the shippers to ship their hogs to Austin.

Q. In all cases where that rate differs from the regular tariff of the railroads, you have underscored the rates in red ink, have you?

A. Yes, sir.

Q. I notice here the town of Bryant, South Dakota, miles to Austin, 280, cattle rate 29½, our rate 24 cents. Now, what does that mean?

A. It means that we have to add the difference between 29½ and 24, to this shipper, in order to induce him to bring his hogs

919 to our point.

Q. That is, you have to give him 5½ cents?

A. We have to give him that benefit as competing with Chicago.

Q. On account of the high rates?

A. Yes, sir.

Q. Now, the rate from—I see on this same paper the rate from this station, Bryant, South Dakota, to Chicago, is 38 cents. What is the packing house rate from Austin, Minnesota, to Chicago?

A. 15.7 cents.

Q. So that you have to pay 29½ cents to get the hogs to Austin, and 15.7 to get them from there to Chicago, get the product from there to Chicago?

A. Yes, sir.

Q. What would make a total of 45.2 and the Chicago rate direct on the live stock from Bryant, South Dakota, is 38 cents?

A. Yes, sir.

Q. So that you are at a disadvantage of 7 cents from that one station?

A. Yes, sir.

Q. You say that in order to get the packer—I mean the shipper—to sell you the hogs, you have to make that rate to him, 24 instead of 29½?

A. We have to give him that special inducement, otherwise he go through with his hogs, he will go on through to Chicago.

Now, what is the rate from your territory around Austin into Chicago, on live stock?

920 A. Twenty-five cents a hundred.

Q. Twenty-five cents a hundred?

A. Yes, sir.

Q. Now, then, if the rate on live stock was put down to level with the packing house rate, it would be the same, 15.7 from Austin, would it?

A. Yes, sir.

Q. And if a similar reduction was made from all these other stations beyond Austin, it would make an additional difference of nearly ten cents?

A. Yes, sir.

Q. A hundred weight?

A. Yes, sir.

Q. So that instead of, for instance, from Bryant, South Dakota, being under the disadvantage of something over 7½ cents per hundred, you would be under the disadvantage of about 17 cents?

A. Yes, sir.

Q. Now, what would be the effect on your business if that should be done?

A. Why, the effect would be that we would either have to pay that much additional for hogs, or go out of business.

Q. Well, which would you have to do, could you do business on that basis?

A. We could not do a profitable business on that basis, no, sir. There is not enough profit in the business.

Q. Now, you figured up at my request the average rate from all these stations to Austin, haven't you?

A. Yes, sir.

Q. Do you remember what it is?

A. 13.6 on the live stock.

921 Q. That is the rate, the average rate, from all the stations on this Exhibit 1?

A. Yes, sir.

Q. Into Austin, is 13.6 cents?

A. Yes, sir.

Q. And your packing house rate, you say, is 15.7?

A. Yes, sir.

Q. Which would make 29.3?

A. Yes, sir.

Q. Adding the two together?

A. Yes, sir.

Q. Have you also figured the average rate from the various points of origin to Chicago?

A. On the live stock, yes, sir. The average rate from those towns is 25½ cents.

Q. So that, taking all these averages together, assuming that you are shipping out as much weight as you ship in, you are at a disadvantage of a little under 4 cents, the difference between 25½ and 29.2?

A. Yes, sir.

Q. As compared with Chicago?

A. Yes, sir, that is, at present, the way it is now.

Q. Yes, I mean at present. What lines of road and what divisions of lines are those towns located on?

A. The Milwaukee road has, I believe—they call it five divisions. They have a division running west of Austin into the Dakotas.

Q. What is that called, that is the Southwestern Minnesota, isn't it?

A. The Southern Minnesota Division, yes, sir. They have
922 a division running east to Lacrosse, and from St. Paul south to Mason City or Calmar and Chicago, running—there are two lines south, the Milwaukee have a line to Mason City from Austin that connects with their Iowa and Dakota divisions; then they have a line running southeast direct to Chicago so that they come in from four different directions to Austin, the Milwaukee road.

Q. Now, Mr. Eberhart, you have stated here in this schedule the distance from Austin to these various points around there, I think, as low as 11 miles, and as high as 280 miles, and in the case of Chicago ranging a little over 300 miles up as high as 632 in one case. Are hogs moved to Chicago from all of these points in this schedule?

A. Well, I think without a doubt they are.

Q. So that you are in competition, actual competition, in Chicago at all these points?

A. Yes, sir.

Mr. SEVERANCE: I will offer this Exhibit in evidence, your Honor.

Q. Mr. Eberhart, is it the custom of your company to make claims against the Railroad Companies for delays in the shipment of packing house products?

A. In carload lots?

Q. Yes.

A. No, sir.

Q. Do you ever make such claims as that unless the goods are damaged in transit?

A. No, sir.

Q. I mean you make no claim for damage on account of
923 some delay where there is no damage to the goods?

A. No, sir, not where there is no damage to the goods.

Q. In disposing of your products other than meats such as fresh trimmings, fertilizers, casings, hair, and so forth, do you or do you not find yourself able to compete on an equal basis with the Chicago packers?

A. Why, no, I don't think we have an equal basis with them on account of the fact that we have to ship most of that product, except fertilizers, to Chicago, and the rate is against us.

Q. You pay the packing house rate on it?

A. Yes, sir.

Q. How many people are employed in your plant?

A. About 200.

Q. How large a town is Austin?

A. 6500.

Q. It is the largest single industry in Austin, then, isn't it?
A. Oh, yes, sir.
Q. Are there any other stock yards maintained there, or any commissions paid for fee-ing or yardage or selling the stock to you?
A. None whatever, no, sir. We maintain our own stock yards, but not as a stock yards company.
Q. Now, with reference to the stations where you have to absorb a portion of the freight rate, from which you have to absorb a portion of the freight rate, is it habitual for you to do that, or only occasionally?
924 A. We do it all the time.
Q. All the time from these particular stations?
A. Yes, sir.
Q. And those are all indicated by a red mark under the figures under the head of, "Our rate"?
A. Yes, sir.

Cross-examination by Mr. COWAN:

Q. Take Bryant, South Dakota. Actual rate 29½, to what place, St. Paul or Chicago?
A. That shows right on there under the heading, I could not tell you off-hand, but I think that 29½ is to Austin.
Q. Why do you put "Our rate 24," is that all you pay?
A. No, sir, but we allow this shipper, we have to pay the railroad 29½ cents, but we allow the shipper 5 cents a hundred, or 5½, or whatever it is there on the hogs he ships as a special inducement.
Q. Why do you mark that "our rate"? Your rate would be 34 cents?
A. It is understood by us that that is the rate we make the shipper.
Q. It is your rate to the shipper?
A. Yes, sir.
Q. In other words, you absorb——
A. That difference.
Q. Enough to make his rate equal to his rate to Chicago?
A. No, to whatever it is there.
Mr. SEVERANCE: Oh, no, it is all shown right there (re-
925 ferring to Exhibit 1).
Mr. COWAN: How does it come to be 5½ cents?
Q. Is the rate to Chicago, we will say, is 38 cents, and to St. Paul is 24 cents, you make him the benefit of the St. Paul rate, do you?
A. In that case, yes, sir.
Q. Well, now, take another case. I see Howard, South Dakota, cattle rate 25, "our rate" 20, rate to St. Paul 25, and rate to Chicago 33.
A. We are offering him that bonus in order to induce his hogs to our market.
Q. While you are doing that, it does not appear from these figures that you are making it on any basis to make his rate that he actually has to pay the same as some other rate?
A. No, not necessarily on any regular basis, but those rates were de-

termined by ourselves as an inducement. We offered them so much, and we make them a standing offer of whatever that amount is.

Q. You figure that that would be an inducement to him to ship?

A. Yes, sir.

Q. According to the locality he was in, and the desire you had for the hogs from that place?

A. Yes, sir.

Q. Where do you buy the hogs when they are shipped in, do you buy them at your place or from the shipper before he starts?

A. We buy them from our place.

926 Q. He just ships in and takes a chance on what you pay him for them?

A. Not always; they frequently telephone and ask us what we are paying, the day before or that evening, and he can ship that night and the hogs are there the next morning.

Q. Don't he always do something of that sort?

A. Some shippers that come regularly and always have come don't take the trouble to ask us always.

Q. Now, do you pay the price based upon the price being paid anywhere else?

A. Yes, sir.

Q. On the price being paid where?

A. Chicago, generally.

Q. How do you get your information?

A. We get it by the Postal Telegraph Company.

Q. Do you send any postal cards or notices of what you are paying for hogs and how many you want?

A. Yes, we send postal cards.

Q. Then it is on the basis of these prices that you offer that shipments are made, practically?

A. Yes, sir, very largely.

Q. Where do you ship your products for sale?

A. In carloads mostly to the south and to Chicago.

Q. What proportion of it do you ship to Chicago, of your total output?

A. Well, it is difficult to say, I presume one-third of our carload business goes to Chicago.

927 Q. Do the Chicago packers ship any stuff to your town?

A. Occasionally we have to buy carloads from some other packers, and sometimes buy it at Chicago, but very rarely.

Q. Do they ship any for sale into that portion of Minnesota from Chicago?

A. No, sir, not from Chicago that I know of.

Q. That all comes from the Missouri River?

A. No, not all, South St. Paul runs two cars out there.

Q. Missouri River and South St. Paul?

A. Yes, sir.

Q. Why is that?

A. I don't understand that.

Q. Why is that so?

A. Why is it so?

Q. That it does not come from Chicago and comes from South St. Paul or Missouri River into Southern Minnesota?

A. I don't know why the packers ship it from their Missouri river plants.

Q. Do you know what the rates of freight are from Chicago up there?

A. To our place?

Q. Yes.

A. I think the same as they are from there to Chicago, 15.7 in carloads.

Q. If the Chicago packer wanted to compete with you, and if he drew hogs from your locality for slaughter, or from points in Iowa, he would not be able to do that and pay the same prices you do for hogs and then ship the product up there for sale?

A. He would find no carload buyers in that section. His
928 business would be very small there in that local way.

Q. How many hogs did your concern kill, for the last four years, I mean each year, if you have got the statement?

A. The year ending November 1, 1903, we killed 52,702.

Q. How many?

A. 52,702. The year ending November 1, 1904, 99,882, and the 10 months of the present year up to September 1st, 119,665.

Q. How many did you kill in 1902?

A. I haven't got that date, but it was about 40,000 that year.

Q. Previously, what has been your capacity?

A. The next year before that was about 30,000, and the year before that, 23,000.

Q. You have been increasing the size of your plant?

A. Yes, sir.

Q. You would not have been able to do that, except for the adjustment of the freight rates that permits you to ship stuff down to Chicago and sell it in competition with the packers, would you?

A. I don't quite understand the question.

The COURT: Read it to him.

(The pending question was then read.)

A. We would not have been able to do it if we had not been able to interest outside capital in our business there.

Q. Did the adjustment of the freight rate have anything
929 to do with it?

A. I think that the present differential between the rate on live hogs and packing house products makes it possible to show an increased business.

Q. That would be the tendency of it, would it?

A. Yes, sir.

Q. What are the comparative rates in the schedules in the State of Minnesota and the products of live stock? Can you ship a car load of packing house product as cheap as you can a carload of hogs killed in the State of Minnesota?

A. I am not informed as to that, because we do not do a carload business in the State of Minnesota. There are no carload buyers there to whom we sell carloads.

Q. Do you ship carloads into the State of Iowa?
A. No, sir.
Q. Where do you ship carloads?
A. To Chicago and points south. Mississippi River Valley points and Texas and southeastern points.
Q. Do you happen to know what your rates are to some points down there?
A. Yes, sir.
Q. What are they?
A. The rate to Texas common points is 75 cents.
Q. What is it to Memphis?
A. Memphis, we don't do any shipping into Memphis, but I think the rate is 28 cents. It is very near that.
Q. Are any hogs driven into your place?
930 A. Very few.
Q. Hauled in in wagons?
A. Well, I don't believe there is any of that done now. They are hauled in in wagons at times.
Q. How many?
A. Oh, a very small proportion of our hogs.
Q. Do you ship a great many in from near by points or do you ship most from long distances?
A. I presume a radius of 100 miles would be a fair estimate, where the most of the hogs come from.
Mr. COWAN: That is all.

GEORGE E. SIMPSON, called and sworn as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. With which of these defendant companies are you connected and in what capacity?
A. Chicago, Milwaukee & St. Paul Railway Company, as Superintendent of Transportation.
Q. How long have you filled that office?
A. About fifteen years or seventeen years.
Q. On that portion of your road which lies between St.
931 Paul and the Missouri River on the one hand, and Chicago on the other, what is the maximum tonnage of loaded cars of ordinary dead freight other than dressed meat and packing house products, cattle, of cars that can be hauled by the same engine at the speed which is required for that service?
A. Well, that varies on each freight division of about 100 miles. Take it on our Kansas City line, from Kansas City and the Missouri River, to Davenport, on the Mississippi River, the average tonnage of our dead freight trains is from 1000 to 1200 tons.
Q. On the same portion of your road, what is the maximum tonnage of loaded cars of live cattle and hogs that can be hauled by one engine at the speed which is required for that service?
A. From 750 to 850 tons.

Q. What is the average weight of the contents of your cars, when loaded with live cattle or hogs?

A. In September, 1902, the average weight of cattle per car arriving at Chicago, was 24,350 pounds; hogs, 16,800 pounds. In May and June, 1905, 149 cars of cattle received at Chicago, the average rate was 21,587 pounds. 139 cars of hogs, 16,781 pounds.

Q. Now, that is the weight of the contents of those cars?

A. That is the weight of the contents of the cars, yes, sir.

932 Q. What is the average weight of the contents of cars on your road when loaded with ordinary dead freight other than the dressed or prepared products of cattle or hogs?

A. We have no statistics covering this for a year, but selecting 500 cars of ordinary dead freight, at random, we find the average weight per car at 40,465 pounds.

Q. Do you mean the weight of the contents of that car, too?

A. The contents of the cars, yes, sir.

Q. On that portion of your road above referred to, what is the average rate of speed at which trains of live stock and live hogs are moved?

A. It is about 20 miles per hour.

Q. If you exclude live stock what would it be?

A. About 24 miles an hour.

Q. On the same portion of your road, what is the average rate of speed at which cars of ordinary dead freight other than the dressed or prepared products of cattle or hogs, are moved?

A. About 10 to 12 miles per hour.

Q. Well, exclude the stock, and what would it be?

A. About 15.

Q. What is the average tonnage rating of locomotives used on that portion of your road in the transportation of live cattle or hogs?

A. Excuse me, I did not catch that question.

933 Q. What is the average tonnage or tonnage rating of locomotives used on that portion of your road in the transportation of live cattle or hogs?

A. About 750 to 850 tons.

Q. What is the average tonnage of locomotives on that portion of your road, used in the transportation of ordinary dead freight?

A. 1,000 to 1,200 tons.

Q. On that portion of your road is preference given to trains loaded with live cattle and live hogs, over trains loaded with the prepared products of cattle and hogs, or over trains loaded with dead freight, or are all of your trains moved upon an equality?

A. We give preference to our live stock trains.

Q. Why do you do that?

A. In order to reach the market at a given time.

Q. Why do you want to reach the market at a given time?

A. We are obliged to get the stock in for the morning market.

Q. Well, why? Why are you anxious to do that?

A. They ship with that view. They load with a view of arriving at Chicago at a given time in the morning. We consider stock ar-

riving at the yards after eight o'clock as late stock, and the market is liable to decline and result in a loss to the shippers.

Q. Well, what does he do if he sustains a loss by reason
934 of not getting there in time?

A. He generally makes a claim.

Q. You give preference to these live stock trains over any train other than freight trains, do you?

A. Yes; we commonly give them preference over our ordinary passenger trains, both in running ahead and at meeting points.

Q. On that portion of your road what proportion of hogs intended for transportation of live stock moved to the points of shipment empty?

A. Well, it depends upon the volume of the live stock business. During the first half of March, 1903, the loaded stock car mileage was 688,953 miles, while the empty mileage was 262,448.

Q. How many—you mean the empty stock car mileage?

A. The empty stock car mileage. The first half of October, the loaded stock car mileage was 772,765. The empty stock car mileage was 656,551. In June, 1905, out of 939 cars of stock received at Chicago, loaded, we returned loaded but 4.66 per cent.

Q. Can't you find any loading, back loading for these live stock cars?

A. We can at times. At this season of the year, the fall months, we are obliged to hurry those cars west bound to take cars of shipments of stock. Our stock car shipment is limited and we have to ship them frequently west bound empty on about as fast a
935 schedule as we do the stock east bound in order to get them back to the point of shipment for reloading.

Q. What proportion of the cars intended for the transportation of ordinary dead freight, are returned to the points of shipment empty?

A. We don't keep—we don't separate the different classes of our equipment showing the empty mileage of each class. The empty mileage of our total equipment for the last fiscal year ending June 30, 1905, was 30 per cent. Separating the movements of the stock cars I should say that the empty mileage of our ordinary box, coal and flat cars would be about 25 per cent.

Q. Between here and the Missouri River is the movement of cattle and hogs uniform throughout the year?

A. No, sir, it is heavier in the fall months.

Q. It is a fact that it is heavier in the fall months, and does that fact prevent you from finding return loading during those months for your live stock cars?

A. Excuse me?

Q. Is the fact that your live stock movement is heaviest in the fall months, does that fact have any effect upon preventing you from being able to load those cars back during the heavy season?

A. As I just explained, during the heavy movement of stock, we could not afford to hold those cars for return loading. When
936 the movement of stock is light we do use some of these cars occasionally for shipments of rails, bituminous coal and oil, and a few other commodities.

Q. About how many months of the year are your stock cars comparatively idle?

A. Well, there is a certain percentage of them idle six to eight months every year.

Q. What percentage of them is idle for that length of time?

A. I should think we could get along with 10 or 15 per cent. less stock cars during that time.

Q. Is the movement of the products of live stock more or less uniform than the movement of the live stock itself?

A. The movement of the product of live stock is more uniform than the live stock itself.

Q. What proportion of your tonnage is live stock, and what proportion of your freight equipment is live stock cars? In other words, how much is your live stock tonnage of your total tonnage, and what proportion of your equipment is live stock cars?

A. During the year ending June 30, 1905, our live stock was 4.53 per cent. of the total tonnage.

Q. What percentage of your total freight equipment was required to carry that tonnage?

A. About 7 per cent.

Q. During the year ending June 30, 1905, what amount was paid for damages to cattle and hogs and to persons traveling in charge of them?

937 A. For the calendar year 1904, our claims paid on stock shipments amounted to $66,029.24. Personal injury claims, $210. That is on stock arriving in Chicago.

Q. Are there not stock yards on your road necessary for the transportation of live cattle and live hogs which are not used for the transportation of dead freight? If so, state the number of them and their cost.

A. Between South St. Paul, Sioux City, Kansas City, Omaha and Chicago, we have 216 stock yards. I am unable to state the original cost of those yards, but an accurate estimate of the cost to duplicate them at the present time would be $183,985.58.

Q. What is the cost of maintenance and renewal per annum of those stock yards?

A. The estimated cost of maintenance and renewal is about 12½ per cent. per annum, or $22,922.32.

Q. Are any of these stock yards provided with side tracks and sheds, and so forth, not used for any other kind of freight?

A. Yes, sir.

Q. Which deteriorates faster, the live stock car or the ordinary box car?

A. It is generally understood that the live stock car deteriorates faster.

Q. Are you able to state the annual cost of repairs upon a stock car and a box car respectively?

938 A. No, sir, we don't separate the cost of the different classes of equipment. I can give you the cost of our entire equipment in that regard, however.

Q. When live cattle and hogs are shipped over your road, arrived

here at Chicago for market in less than train loads, do you hold them at that point, at your point of intersection with the terminal road, until you can accumulate a train load, or do you send them immediately off to the stock yards?

A. We send them immediately to the stock yards.

939 Q. Are there any trains of live cattle and live hogs run special on your road?

A. Yes sir.

Q. In order to make the market?

A. Yes sir, we run quite a good many.

Q. Are any cars of live stock picked up on the line of your road or of its branches between the Missouri River and Chicago and brought on here on what you call pick up trains?

A. Yes sir, we pick up cars at nearly every station.

Q. Well, are those cars picked up by your through stock trains or are they picked up by what is known as local, or pick up trains?

A. They are picked up by a local train. On our line between the Missouri River between Omaha and Chicago we have four divisions—one running from Omaha to Perry, one from Perry to Marion, one from Marion to Savanna, and one from Savanna to Chicago. We star- out local pick up trains from each of these points to pick up the local shipments of stock and also the stock coming to us over the branch lines and connecting lines?

Q. Well, just there, do I understand that you have a pick up train that runs over each division?

A. Yes.

Q. Now if there be branches intersecting that division and these cars of stock are off those branches, do you stop that local

940 train and send it up the branch for the branch stock, or do you bring the branch stock down by separate engine or train?

A. We would bring the branch stock down to the junction by separate engine. We would not pull the stock—we would not delay the stock originating on the main line to send up the branch for stock. As soon as we secure enough stock to justify a special through train, we run it special from that point. For instance, if we get stock enough between Council Bluffs and Perry, which is about 127 miles this side of Council Bluffs, including the stock brought in on our Sioux City and Dakota Division and on our Des Moines Division, we will run that stock from Perry to Chicago special on fast time, and that train would pick up no stock after leaving Perry. The same arrangement would hold good with regard to the local pick up train starting from Perry and running as far as Marion. That would be a through train from Marion to Chicago.

Q. But it would be a pick up train between Perry and Marion?

A. It would be a pick up train between Perry and Marion which is a little over 100 miles.

Q. Are there any branches coming into that division?

A. Yes sir. We receive stock from the Iowa Central at Pickering and from the Des Moines, Iowa Falls & Northern at Cam-

941 bridge, and from our Des Moines Division coming in from Des Moines, and from Boone, at Madrid. And as soon as

we are able to make a fairly good tonnage train, the train is run special from that point, which is generally a division point. Occasionally we will send out a train, an engine and a crew to pick up a full train of stock at one, two, or three stations and run the train special from that point to Chicago, but most of our trains are local trains between the Missouri River and Chicago until we can secure enough tonnage to run them through on fast time.

Q. Are there any special expenses incident to the transpor-ation of live cattle and hogs on your road which are not incident to the transportation of dressed or prepared products of cattle, or hogs, or to the transportation of ordinary dead freight and if so, I wish you would state them?

A. Yes, sir, we provide special equipment for handling live stock. We are obliged to clean those stock cars occasionally. We provide stock yards, and we are obliged to clean and take care of the yards. We run our trains on a faster schedule than we do our ordinary dead freights, and consequently, with less tonnage. Quite frequently orders for stockcars placed with our superintendents are canceled after sending the cars to the point of shipment, which results in some little expense. We are obliged to either hold the cars, delay
942 them there until they are wanted or haul them back to some other point, making additional empty car mileage.

Q. When you take a train of packing house products at Omaha—there are packing houses at Omaha are there not?

A. Yes sir, South Omaha.

Q. Destined for Chicago, do you stop them along the road to pick up packing house products at other packing houses between here and Omaha if there be any?

A. To a limited extent.

Q. How many packing houses have you got between here and Omaha on your line of road?

A. Well, on a direct line we have none, but we get shipments of packing house products coming into Manilla from Sioux City, coming into Madrid from Des Moines, and coming in to Marion from Cedar Rapids.

Q. Now, would you carry those packing house products in the same train that starts from Omaha provided you did not get a full train at Omaha?

A. Yes sir.

Q. Well, from Omaha do you generally get a full train load of packing house products?

A. Very seldom.

Q. What do you fill up your trains with there?

A. We get some stock and some fruit, and failing to get a reasonable tonnage, we fill the trains up with ordinary dead freight.

943 Q. During the five years ending June 30, 1905, has the number of cattle and hogs moved over your road increased or decreased?

A. They have increased.

Q. Do you know to what extent they have increased during that period?

A. Yes sir. During the year ending June 30, 1905, the total tonnage of cattle was five hundred and—oh, you want the increase of live stock?

Q. Yes, cattle and hogs if you have got them separate.

A. In 1900, we brought in 51,475 cars of live stock—I have not separated the different stock; and in 1904, we brought in 58,833 cars.

Q. You cannot separate the cattle and hogs from horses and mules, and so forth. What was the size, capacity of tonnage of your live stock cars in 1888, and what is the size and tonnage of your present live stock cars?

A. In 1888 we had 2223 cars, 30 feet in length, and under; 250 cars, 34 feet; 1219 of these cars were 30,000 pound capacity and 1254 were 40,000 pound capacity.

In 1905, we had 341 cars, 30 feet and under; 226 cars, 34 feet; 2352 cars, 36 feet. 150 of these cars are 30,000 pounds capacity; 417 are 40,000 pounds capacity and 2352 are 60,000 pound

944 capacity.

Q. You seem to have practically abandoned the 30 foot car?

A. Yes sir.

Q. How many live stock cars did your Company have in 1888, and how many has it at the present time?

A. In 1888 we had a total of 2473 cars. At the present time we have 2919.

Q. When your movement of live cattle and hogs is greatest Eastward, in what direction is the movement of your other freight headed?

A. In the same direction.

Q. In your experience how does the cost of transportation of live cattle and live hogs, all questions considered—all conditions considered, compare with the cost of transportation of the dressed or prepared product of cattle or hogs?

A. The first is greatest.

Q. How does the cost of transporting your live cattle and hogs compare with the cost of transporting ordinary dead freight?

Mr. COWAN: I believe I will make an objection to that and let him state the articles. I am rather tired of this character of telling a thing that I think ought to be stated. If he gets it from the annual report, all a conclusion and hearsay to go ahead and say it is greater. The reports ought to say exactly what it will cost.

The COURT: I suppose he will state that before he gets

945 done with the question—give the items if you have them there.

(Question read.)

A. This is a difficult matter to answer. We estimate, however, the cost of handling live stock to be about 12 per cent. greater than the cost of handling ordinary dead freight.

The COURT: Twelve per cent.?

A. Twelve per cent.

Q. Have you the items there upon which you base that?

A. No sir, that is practically an experiment in the consumption of coal and so forth.

Mr. BAXTER:

Q. Are there any packing houses located at stations on your road between South St. Paul and Missouri River points and Chicago except the ones that you have mentioned?

A. There is a packing house located at Austin, and at Ottumwa—

Q. Are they on your main line?

A. No sir. The one at Ottumwa is on our main line between Chicago and Kansas City.

Q. Can you state the number of cars of dressed or prepared products of cattle and hogs received by your company during the year ending June 30, 1905, from packing houses located at stations on your road between St. Paul and Missouri River points on
946 the one hand and Chicago on the other?

A. 3535.

Q. Are the live cattle and hogs which are produced in the territory between the Missouri River and Chicago transported in your through live stock trains, or in local pick up trains?

A. Stock originating at local stations is handled in our local trains.

Q. Does your road furnish free transportation to persons in charge of live stock, and if so, upon what basis?

A. Yes sir, we furnish transportation for one or more cars to one man, two or more cars entitles the party to a return pass in our passenger trains.

Q. Do you use the ordinary freight caboose on your live stock trains, or what kind of a caboose do you use?

A. Where the run is during the night we furnish Drover's cabooses. They are provided with bunks, which bunks are equipped with blankets, mattresses and pillows for the accommodation of these stock men.

The COURT:

Q. What proportion of cabooses do you have of that kind?

A. We have about two hundred.

Q. Out of how many cabooses?

A. Out of a total of 493.

Q. Are all these cabooses used in the carrying of live
947 stock, of the kind you describe?

A. Our drover's cabooses are in service between here and the Mississippi River, in order to give the stock men a night's rest coming into Chicago. The stock originating at points west of the Mississippi River is generally handled in daylight, and those drover's cabooses are not essential on that part of the system.

Q. Do you furnish free transportation to persons in charge of live stock products, packing house products?

A. No sir.

Q. Do you furnish them to persons in charge of ordinary dead freight?

A. No sir.

Q. Have you prepared as a detailed exhibit to your testimony, a statement showing the names of all the stations on the portion of your road between the Missouri River and Chicago at which stock yards are located, the cost of construction of said yards and the annual cost of maintenance and operation of said yards?

A. Yes sir.

Q. Will you file it as "Exhibit No. 1" to your testimony?

A. Yes sir.

(The witness here produced a document which was marked "Simpson's Exhibit No. 1" and filed with the Court as a part of the testimony of said witness.)

946a SIMPSON EX. No. 1.

Statement of Stock Yards.

Located on the Main Lines of the C. M. & St. P. Ry. between St. Paul and Chicago, and between Sioux City, Omaha, Kansas City and Chicago, with the cost of duplicating them at the present time, together with annual cost of maintenance and operation.

Summary.

Main Line B-*w*teen St. Paul and Chicago.

	Cost to Duplicate.	Annual Cost of Maintenance and Operation.
From St. Paul to La Crosse.....	4479 00	559 87
From La Crosse to Milwaukee.....	22022 58	2752 72
From Milwaukee to Chicago.....	4475 00	559 37
	30976 58	3871 96

Main Line Between Sioux City, Omaha, Kansas City and Chicago.

From Sioux City to Manilla.....	14859 00	1857 38
From Omaha to Manilla.....	6050 00	756 25
From Manilla to Sabula.....	28755 00	3594 37
From Kansas City to Savanna.....	39369 00	4921 13
From Savanna to Chicago.....	63985 00	7998 23
	153018 00	19127 36
From St. Paul to Chicago.....	30967 58	3871 96
From Sioux City, Omaha, & Kansas City to Chicago	153018 00	19127 36
	183985 58	22999 32

C. F. Loweth Engineer and Supt. of B. & B.
Chicago, 9/13-05.

948 Cross-examination by Mr. COWAN:

Q. Mr. Simpson, in that statement, did you cause to be put down the detail of the cost against each stock yard so that we could seek other evidence to see whether your cost is correct or not?

A. Yes sir. I think that statement showed the cost of each yard.

Q. No, maintaining each yard.

A. How is that?

Q. Does it show the cost of maintaining the yard at each place?

A. Oh, no sir.

Q. Will you please state in your examination in getting these figures what it cost you to maintain your yards at some of your principal shipping points in Iowa, so we can investigate it and see whether it is correct or not?

A. Yes sir.

Q. Name one of them?

A. I haven't that information. I can get it.

Q. How much did you estimate it cost you to maintain stock yards?

A. About 12½ per cent.

Q. Of the value of the yard?

A. Yes sir.

Q. And what does the company do?

A. I beg pardon?

Q. What do you do that costs that much money there in maintenance?

949 A. Repair the yards, keep the yards in repair, repair the fences and the sheds.

Q. Who made that estimate?

A. Our Bridge & Building Department.

Q. Will you please name some one point, some half dozen prominent shipping points out in Iowa on your line where you have got such yards, and state what the yards are estimated to be worth at each place, and what it costs you per year to maintain those yards?

A. Yes sir. At Hornick on our Sioux City and Dakota Division, the estimated cost, or the estimated value of the yards, is $1100. The cost of maintenance and operation, $137.50.

Q. The cost of operation and maintenance?

A. Yes sir.

Q. You have been talking about maintenance all of the time?

A. That includes the cleaning of the stock yards and the care of the yards.

Q. Yes sir, and you have charged in the item of the cost of the loading somewhere, or some of the witnesses have, the expense of loading and maintaining men about your yards.

A. I have not.

Q. I don't mean you have, but I am talking about the witnesses for the defendants.

950 A. At Mapleton, Iowa, also on our Sioux City and Dakota Division, the estimated value of the yards is $1875; the cost of operation and maintenance, $234.38.

Q. Will you state how much of that is operation and how much for cost of repairs?

A. That I am unable to give.

Q. What department of the road—I was not in when you were first questioned, and I have forgotten—I have examined you before too—what department are you in?

A. Transportation.

Q. Do you personally know what it costs to maintain one of these good stock yards of four or five pens and what the items of cost are to maintain it. I am talking now about repairs.

A. No sir, I only know from the figures given me by our Bridge & Building Department.

Q. Well those figures do not point out what it is that you do to the yards in the way of repairs that you estimate at 12½ per cent. deterioration?

A. That is for the repair of the yards and the repairs necessary to keep the yards in good order.

Q. Now I am trying to get at just what those repairs are, is it nailing the planks that are knocked off?

A. Yes sir.

Q. And how much do you believe from your knowledge of railroading and stock yards that it costs you a year to keep the planks that get knocked off nailed on one of those yards?

951 A. That depends on the class of stock we are handling. Take some of the Texas stock for instance, and they would knock off a good many boards.

Q. I know. They testified that as to Texas down there and I proved that it didn't cost Five Dollars a year at every stock yard in the country.

A. Well, you ought to know, Judge.

Q. Will you name some of the stock yards where you know your company has expended $5 a year in nailing up boards?

A. No sir, I cannot.

Q. Can you name a stock yard where they expended $5 in making any other sort of repairs in a year?

A. No sir, I cannot. I am only able to speak from information given me.

Q. I know. I am trying to get whether these are facts or not, or whether they are from wild guesses. Now, Mr. Simpson, do you believe from your knowledge of stock yards that it would cost you $10 a year to keep the planks nailed on and the hinges fastened on the gates and such repairs as are necessary to these chutes on any of your country stock yards on your line in Iowa?

A. Yes sir, I should think it would. The lumber used in the construction of those yards will deteriorate, and we are obliged to replace the fences and the sheds and the water troughs and the feed

952 racks, and the chutes and everything in connection with the yards.

Q. How often?

A. I should think the natural life of a yard would not be over fifteen years.

Q. Well suppose the natural life of the yards is fifteen years, don't you know that it is an insignificant expense to keep the boards nailed on and such other like repairs as you do at one of these little cpuntry stock yards?

A. Well, no, the expense is quite an item, and in addition, the expense of cleaning the yards is also quite an item, taking care of the wells, and everything in connection with the yards.

Q. Personally, how often do you know that these yards are cleaned?

A. Personally I never saw one cleaned.

Q. Leaving out somebody's figures.

A. Personally I never saw one cleaned in my life.

Q. Do you think you can find a shipper in here, there are a great many of them here in the markets every day, that has lived around one of those yards, who has ever seen one cleaned?

A. I presume there are a good many.

Q. Now, you said awhile ago that your freight trains, your dead freight trains have more freight in them than your live stock trains. Do you know that to be a fact?

A. Yes sir.

953 Q. How do you know it?

A. I know it from the reports which we received.

Q. Whose reports?

A. Reports made to my office by the conductors handling those trains, we require each——

Q. Now, will you bring down here with you some of those conductor's books, the originals, and let us see whether those reports show that or not?

A. Yes sir.

Q. You will?

A. Yes sir.

Q. Mr. Simpson, did you assist in making out a statement for Mr. Calkin's that I requested to be filed in the Texas case showing the consist of your trains out of Savanna eastbound for the first fifteen days of October, and the first fifteen days of February?

A. I think I did.

Q. Don't you know it is a fact that you all testified in that case the same as you do here, that your stock trains were lighter trains, and carried a less number of cars until that statement was made, and that the statement showed exactly the reverse.

Mr. LYNDE: I object to that. Let the statement be produced.

Mr. COWAN: I want to know if this witness doesn't know that is a fact.

Mr. SEVERANCE: Produce the statement and show it to him.

954 Mr. COWAN: I haven't got the statement but I can ask him about it. He helped make it.

The COURT: The objection is overruled.

Mr. COWAN:

Q. Isn't that a fact that that statement showed that?

A. I don't remember that statement. I gave Mr. Calkins some information, I don't remember just what it was at the present time.

Q. Where do you keep these train conductor's books?

A. The conductors keep the books themselves.

Q. Don't they file them as a record in your offices?

A. No sir.

Q. Do you mean that you don't keep them, that the conductor don't file the books with you, and you file them away in the archives?

A. No sir, he does not.

Q. What becomes of the original books which he keeps?

A. Each conductor keeps his own books so long as the conductor is in the service of the company.

Q. Well doesn't he make any report of the number of cars in each train and the consist of it?

A. Yes sir.

Q. And where is that filed?

A. That is filed in the Car Accountant&s office.

Q. And it was from that that you made up these statements if you had anything to do with them?

955 A. Yes sir.

Q. Will you produce those reports of trains, of trains of live stock and dead freight eastbound out of Savanna for—from October 1st to 15th inclusive, in 1904, and February 1st to 15th inclusive, 1904?

A. February 1st to 15th, 1905 and October 1st to 15th, 1904?

Q. Yes sir, eastbound out of Savanna?

A. Yes sir.

Q. Now, Mr. Simpson you stated it cost you 12 per cent. more, or 12½ per cent. more, or rather you stated that you estimated the cost that much more to run live stock than it does other freight, is it not a fact that when you have a large tonnage of a commodity on a railroad you can handle that tonnage cheaper than you can a distributed and small tonnage per car as a rule, isn't that true?

A. I should say it was.

Mr. SEVERANCE: Speak a little louder.

A. I should say we can handle a large tonnage more economically than we could a small tonnage.

Mr. COWAN:

Q. Isn't it a fact that when that tonnage comes on a part of your road where there is a heavy density of traffic that you can handle it cheaper than you can on parts of the road where there is not such a heavy density of traffic, per unit I mean, per car?

956 A. Do you refer to full car loads or less than car loads?

Q. No, take a car load of traffic, that you can handle it cheaper per car when you can handle 40 trains a day than you can where you have got ten trains a day, the total expense of doing the business?

A. Ordinarily, yes sir.
Q. How is that?
A. As a rule, yes. Of course, there is a maximum.
Q. There is a maximum that can be done on a single track road?
A. Yes sir.
Q. Or two tracks for that matter?
A. Yes sir.
Q. As you increase the volume of your traffic on a given division of the railroad here in this western country, increase the number of cars that you are handling per train, don't you decrease the proportionate cost per car when you are doing that?
A. I should say yes.
Q. How many cars of live stock do you handle in a train in your judgment which you bring into Chicago here from the time you get the train made up, you start out in Iowa and you make up a train over there, say in central Iowa, how many cars do you run per train?
A. We figure on a tonnage basis. We will handle between Savanna and Chicago—Savanna is on the Mississippi River,
957 that is our Eastern Division, we will handle from 950 to 1200 tons, according to the time we leave Savanna. If the train leaves there late, we are obliged to reduce the tonnage in order to reach the market on time the following morning.
Q. Isn't it a fact that the engineers simply run the same engine all the time, each engineer stays with his engine with rare exceptions?
A. As a rule.
Q. As a rule that is true. Now doesn't he pull dead freight trains when it comes around his time to be called to go out, and pull live stock trains when it comes at his time to go out?
A. He takes his turn, yes sir.
Q. There is no such thing as having one set of engines to pull live stock trains and another set of engines to pull dead freight trains, is there?
A. No sir.
Q. You have got a class of engines which work out of those Divisions or on the main line, that pulls any sort of train that you happen to want pulled, haven't you?
A. Yes sir, we generally assign our best power to our main lines.
Q. How many loaded cars on the average on your line of road makes the average of train, do you happen to recollect?
A. It depends on what division it is.
958 Q. Well, take your system, take your system, the average load?
A. The average for all divisions.
Q. Yes sir, of loaded cars?
A. I could not say.
Q. If you happen to recollect—I have the annual report here that shows, if you don't recollect.
A. I think our annual report gives that.
Q. Is it not a fact that live stock is moved longer distances than the average of freight on your road, isn't the live stock movement

very much more than the amount of the average tonnage on your road?

A. I could not say.

Q. What would you say would be probably the average distance hauled of the cars of live stock which your road moves?

A. The average distance?

Q. The average distance hauled?

A. I could not say as to that. We haul stock all the way from 25 to 800 miles.

Q. You haul over 800 miles from Evarts?

A. Yes sir.

Q. South Dakota?

A. Yes sir.

Q. Then you pick up all the way through the State of Iowa, a four or five hundred mile haul in?

A. Yes sir.

Q. And you get the great bulk of live stock from points west of the Mississippi River, don't you?

A. No sir.

959 Q. How is that, points west of the Mississippi River?

A. Only excepting the range stock.

Q. You thought I said "Missouri," I said Mississippi?

A. Oh, Mississippi, yes sir.

Q. How far is it from here to the Mississippi River on your line?

A. The nearest point is 138 miles to Savanna.

Q. So that you know that you haul practically all your live stock at least 138 miles?

A. All originating west of the River, yes sir.

Q. And a great deal of it 400 miles?

A. Yes sir.

Q. And a very considerable portion of it 600 miles and 700 miles?

A. No, only that originating, coming to us at the Missouri River and at Evarts.

Q. All that you move out of Kansas City and Missouri River points, you haul an average of 500 miles, from Evarts over 800 miles?

A. Approximately, yes sir.

Q. Now, isn't it a fact that the traffic that moves long distances is always considered desirable traffic?

A. Not always.

Q. Well, it is unless the rate of freight is extremely low, isn't it?

A. Yes sir.

Q. You said that live stock amounted to 4.5 per cent. of your total tonnage, that means of the gross tons handled?

A. Yes sir.

960 Q. Now, have you got any figures that show how large a proportion the live stock ton miles is to your total ton mileage?

A. I have not with me, no sir.

Q. But it would be a very much greater proportion, wouldn't it?

A. I could not say as to that.

Q. The average distance a ton is hauled on your system of road is about 183 miles, isn't it?

A. I could not say; I think our annual statement shows that.

Q. For 1905, it is 175.14 miles, the average miles each ton of revenue freight is carried?

A. Yes sir.

Q. Isn't it a fact that live stock pays more per car mile on your line of road, more revenue per car mile than the average of all your freight per loaded car mile?

A. That is a traffic matter, Judge; I am not up in traffic.

Q. I don't know who to ask these questions of, one fellow says he knows about one thing and one about another. I thought you said you were in Transportation Department, does that mean operating.

A. Operating, yes sir.

Q. Operating Department, have you got the figures which enable you to testify as a fact what amount of coal it costs more to move a live stock train 20 miles an hour than it does a dead freight train 10 or 12 miles an hour?

A. Yes sir, I can furnish that information.

Q. Do you now recall approximately what it is?

961 A. No sir.

Q. Now, how can you get at that information, how do you keep it?

A. Through our Statistical Department.

Q. Your Statistical Department?

A. We keep, our Statistical Department keeps a record of all the coal burned by each engine, of the oil used on each engine, the number of tons hauled, and the number of ton miles.

Q. I know they keep it averaged, but do they keep it for each engine?

A. Yes sir.

Q. Each engine separately?

A. Yes sir.

Q. Now I wish you would make a statement from that statistical report that we can verify as being correct, that shows what the coal consumed is on a live stock train of 30 cars and a dead freight train of 30 loaded cars from Savanna to Chicago, taking the oil, fuel and the coal, and see what the comparison is and let us get down to some actual figures about this extra cost of transportation.

A. All right.

Q. Now, you stated Mr. Simpson, that you selected 500 cars at random that showed 40,000 pounds per car.

A. Yes sir.

Q. Isn't that very much above the average of your loaded cars?

A. I think not.

Q. How much does your grain average?

962 A. Well, from 60,000 to 80,000 pounds.

Q. How much does your lumber average?

A. I don't know what the average would be for our lumber?

Q. If you select out, take out coal, grain, lumber, sand stone,

lime and cement, is it not a fact that your live stock tonnage will average greater than your loaded car mileage on the balance of the freight?

A. I don't think it would.

Q. Do you now recall what the average ton loading is of cars, loaded cars?

A. Live stock?

Q. No, your average loaded car tonnage for your system?

A. No.

Q. 13.73 tons?

A. That includes merchandise however.

Q. Certainly, it includes local less than car loads, in cars that are loaded?

A. Yes sir.

Q. Do you know how much the average earnings per ton per mile is on the average of all your freight, including local and less than car loads?

A. I could not say, that is a matter of record.

Q. You said that it was said that stock cars deteriorated faster than other cars, is that not embraced in the Repair Account, you repair the parts that get broken, if the floor rots out, as it will in course of time, and you repair that, it is all in your account for repairs and renewals of cars?

963 A. We do not separate that from the other classes of equipment. I stated that it was generally conceded by railway men that stock cars deteriorated faster than box cars, or coal cars or flat cars. That is on account of the character of the freight they have to handle. The moisture in the cars naturally rots out the floor and sills faster than commodities handled in other classes of equipment.

Q. You have spoken about cleaning your cars. Have you any contract with any one to clean your cars?

A. Yes sir, we have a contract at the present time at Sabula, Iowa.

Q. And what is that contract?

A. It is 25 cents a car.

Q. Twenty five cents per car?

A. That is the actual rate.

Q. Mr. Simpson, isn't it a fact that 25 cents a car is regarded as about the proper charge for cleaning cars?

A. For the labor of cleaning, I should say at this time of year is a fair price. It is approximately what it actually costs.

Q. The fellow isn't losing money on the contract is he?

A. I don't imagine he is.

Q. Do you know how many cars a man will clean in a day?

A. Well, it depends on the time of year. You can clean

964 more cars in July than you can in January.

Q. Well, the average for the year, what would you say?

A. Oh, I should say in ordinary weather when the manure is not frozen, one man could clean, if the cars are not too dirty, seven or eight cars a day.

Q. Can't he do better than that?

A. Not very much, I don't think.

Q. Now, isn't it a fact that these cars are used over and over again without cleaning?

A. Yes sir.

Q. And when that is done, there is just a little sand thrown in, or additional hay and straw?

A. They are not cleaned every trip, we could not hold them for that purpose, we could not delay them.

Q. You delivered 59,000 cars of live stock in Chicago during 1904, and 60,000 cars in 1903. What proportion of those cars do you believe, you honestly believe were cleaned on every trip?

A. On every trip?

Q. Yes.

A. We don't pretend to clean them on every trip.

Q. I know you don't; I thought maybe you knew the proportion.

A. Oh, not any of them.

Q. Couldn't you find that out Mr. Simpson, by ascertaining how much at 25 cents is paid out in a year for cleaning cars and how many cars purported to be cleaned?

965 A. I could not say. We clean at a large number of points. Our section men do a good deal of cleaning.

Q. Did you ever happen to be at a stock yards when cars came in and had to be cleaned, and saw how long it took a gang of section men to clean bunch of stock cars?

A. No, I don't think I have.

Q. Now, in regard to the bedding of cars, isn't it a fact that much more than half of the cars shipped from Iowa are bedded with hay and straw that the shipper furnishes himself, that don't cost the company a cent?

A. I could not say what proportion are bedded with hay or straw or what proportion bedded with sand or gravel.

Q. On shipments from down in Southwestern Iowa, and from Missouri this side of Kansas City, isn't it a fact that you actually charge the shipper when you furnish him any sand or bedding in the car?

A. I think we make no charge for sand or gravel.

Q. Now if shipments west of the Missouri River—Well, I believe you don't extend west, but in your shipments from Evarts, haven't you got in your published tariff that if the shipper furnishes bedding and puts it in, you allow him 25 cents per car?

A. I could not say.

Q. You said that the product moved more uniformly than the live stock?

A. Yes sir.

966 Q. How could that be the case when the live stock makes the product?

A. The product is moved, the live stock coming into Chicago and slaughtered is moved East—I refer simply to the movement of product over our own road.

Q. Now, you move from the Missouri River, from Omaha say, don't the cattle have to come in there to be slaughtered, and hogs?

A. Yes sir.
Q. And it takes them to make the product?
A. Yes sir.
Q. And isn't there a constant movement in and a constant movement out?
A. Yes sir.
Q. Have you any sort of traffic on your line of road that furnishes you anything like the regularity of traffic that your live stock furnishes, month by month?
A. Why, yes, we have commodities that are more regular than the live stock.
Q. Now, what is that, merchandise?
A. Merchandise, for instance, lumber.
Q. Merchandise, and your merchandise is principally in less than car loads?
A. Yes sir, and lumber and coal—well, I will except coal.

An adjournment was here taken until the following day, Tuesday, September 26, 1905, at 10 o'clock a. m.

967 SEPTEMBER 26, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon GEORGE E. SIMPSON, resumed the stand for cross-examination by Mr. Cowan, and testified as follows:

Q. At the adjournment you were asked to secure a statement relative to the consumption of coal between Savanna and Chicago. Have you examined your records with respect to the matter?
A. No sir, those records are kept in Milwaukee and the statement you asked for called for the comparative cost between handling 30 cars of stock and 30 cars of dead freight. We would have to make the test with two 30-car trains in order to arrive at the cost for consumption of coal as between the two trains.
Q. Well, what is your position with respect to having knowledge, of the relative coal consumption? Do you obtain knowledge in the position you hold, of the coal consumption in the running of trains?
A. Only from our statistical department. We receive monthly reports showing the amount of coal, oil and waste and other supplies used by each engine on the various divisions.
968 Q. That is by the month?
A. That is by the month.
Q. So you haven't it by the train, you haven't the statistics by the train?
A. That information is prepared from such statistics as I understand.
Q. Are there not two factors which bear a direct relation to the coal consumed; one, the weight behind the engine and the other, the speed at which you run?
A. Naturally they depend upon the rate of speed and the tonnage hauled.

Q. How far is it from Savanna to Chicago?
A. 138 miles.
Q. At 12 miles an hour that would take about 11 hours and a half, or eleven hours, say, for your dead freight trains?
A. Yes sir, about that.
Q. At 10 miles an hour it would take 13 hours and more?
A. 13½.
Q. Almost 14. At what point in the time of train crews do you begin to pay over-time? How many hours for that division without over-time?
A. I cannot say.
Q. You don't know what time your over-time begins? Do you know approximately?
A. I could not say, I think it is 10 hours.
Q. That is customary, is it not, 10 hours' time on a division?
A. I am under the impression that it is, yes sir, although I cannot say positively.

969 Q. Isn't that made upon the basis that 10 hours would be sufficient ordinarily to carry a train over the division?

A. No sir, some divisions are shorter than others. We have divisions of 100 miles and some less.
Q. Have you got some schedule trains that run over that division?
A. Yes sir, we have schedule trains on all of our divisions.
Q. You have a time-card that the conductors use that shows the schedule of all your schedule trains, haven't you?
A. Yes sir.
Q. I would like to have you furnish that to us.
A. Of each division?
Q. No sir, just take that division, the division of your company out of——
A. Between Chicago and Savanna?
Q. Yes. Take the division from Savanna to Chicago. Are you certain that your statement that your freight trains other than live stock trains and dressed meat trains run at a speed of 10 or 12 miles an hour, are you certain that that is correct?
A. They often do, yes sir.
Q. If 10 hours is the time that you begin over-time then you have to pay over-time in all cases of that character on that division?
A. Yes sir.
Q. And you pay no over-time on the cattle trains because you run them within 10 hours?
A. As a rule.

970 Q. Is it not a fact that you have schedule trains that run through carrying the fast freight from Omaha to Chicago and in the opposite direction?

A. We have schedule trains west bound through from Chicago to Council Bluffs and Omaha. We have no through schedule trains east bound, however. We have certain schedules for trains leaving South Omaha at noon and Council Bluffs in the evening which are scheduled up to the Mississippi river, up to Savanna. From there we run them as extra trains.

Q. About what is the schedule of those trains from Omaha to Savanna?

A. They vary. I have not——

Q. Well, you will hand up your time-card showing that, also?

A. That will show, yes sir.

Q. Isn't it a fact that the contention that is made of the extraordinary speed of the live stock train and the extraordinary slow time of the dead freight train, is immensely magnified in both cases, for the purpose of this case?

A. I don't think it is. I know we are obliged to run our stock trains at a high rate of speed very often in order to get them into the stock yards in time for the market.

Q. You have no train that carries live stock that is scheduled from Western Iowa that arrives here in less time than 22 hours, have you?

A. From what point?

Q. Say some point in western Iowa 400 miles from Chicago.

971 A. In less than 22 hours.

Q. Yes.

A. Well, no, not at that distance, I don't think.

Q. You have no train that brings live stock from the Missouri river to Chicago in less than 24 hours, have you?

A. No sir.

Q. Isn't it a fact that the live stock which you bring through from Kansas City or Omaha, that would be intended, for example, for Monday's market, would be loaded out there on Saturday night or Saturday evening or do you know?

A. As a rule it would be, although we often get stock on our noon meat train, a few cars which we handle on the schedule of 24 hours.

Q. Your meat train is on a 24-hour schedule?

A. Yes sir.

Q. Do you not know as a matter of fact that the live stock shippers along your road prefer it so and are anxious for their cars of live stock to be put onto your meat trains because they are the faster trains coming into Chicago?

A. I do not know that they do.

Q. How is that?

A. I don't know that they do. We don't pick up any local stock with our fast meat trains.

Q. Do you always have a full train of meat?

A. No sir.

Q. You fill it out with something?

972 A. Yes, we generally get fruit, occasionally, a few cars of stock and then we get meat at our junction points coming in from Sioux City, Des Moines and Cedar Rapids.

Q. Do you dispute the proportion or the statement that the live stock shippers are anxious to get hooked onto that meat train when they can?

A. I don't dispute it, no sir.

Q. Do you contend that the running of the live stock trains interferes with the o-eration of your meat train and that you side track them to let the live stock trains pass?

A. Occasionally we are obliged to give the stock the preference over our meat trains.

Q. Just what do you mean by "preference"? When the two are due to leave a division point at the same time, you then give the live stock train preference or do you stop the meat train on the road to let the live stock train run around it?

A. If we were late coming into Savanna in the evening, say 11 or 12 o'clock at night, if we have meat coming in at that time and stock due about the same time, we would start our stock trains out ahead of the meat train in order to get into the market.

Q. Now, is that not the only character of preference that you know of that is given to the stock train over the meat trains?

A. We very seldom side track a meat train between the Missouri river or Kansas City and Savanna in order to let a stock train by, because they both run practically at the same rate of speed.

973 Q. In the transportation service of meat and the products of meat and live stock, between the Missouri river and Chicago, is it not a fact that there is competition at least to secure the traffic with the several other lines that reach from Chicago to the same point, which try to secure all the traffic they can?

A. I presume there is more or less competition although I am not in the Traffic Department and I could not answer that question intelligently. I am not soliciting freight, I am handling it after they secure it.

Q. Well, the operating department are the people that try to get the business and handle it, too. Ain't everybody engaged in that?

A. The operating department don't solicit business, no sir.

Q. I am not talking about soliciting. Do you not know as a railroad man engaged in the business that each railroad wants all the business it can get?

A. If it is profitable, yes sir.

Q. In order to get it and keep it, you each perform about the same service, is that not true?

A. It is my office to give the business good service after it is secured by the traffic department.

Q. Well, do you not know the character of service that your competitors are giving?

A. In a general way, yes sir.

Q. And you attempt to give substantially the same service?

974 A. Or better.

Q. How is that?

A. Or better.

Q. And that applies to both the live stock and packing house product and dressed meat?

A. It applies to all classes of traffic.

Q. What percentage of say your total freight carried from the Missouri river east is carried on the trains which have the fast freight schedules and what proportion on these slow trains that there has been so much said about?

A. We carry all of our stock and meat on our two regular sched-

ule trains, one leaving the Missouri river at noon and one in the evening about 7 o'clock.

Q. You don't always have a load on these trains if you confine it to dressed meat actually?

A. Not always, no sir.

Q. And you fill it out with other freight?

A. If we cannot secure enough tonnage at the junction points, we do.

Q. What do you mean, if you cannot secure freight at the junction points. Those points further east?

A. East of the Missouri river, for instance Manila, where we receive our Sioux City meat and stock. We would fill out those trains at that point.

Q. So you do not always run a full train out of Omaha?

A. Not always, no sir.

975 Q. And the same applies to Kansas City?

A. Yes sir.

Q. But you depend upon getting the same character of freight, either packing house products, and dressed meats or live stock, at some junction points?

A. As far as possible.

Q. What is the objection to putting live stock that come off of one of your branch lines at some junction point, on that train?

A. There are no objections if it can be handled and it don't cause too much delay.

Q. If the stock is already there it don't cause much delay to put it in the train?

A. We would take it, yes sir.

Q. Isn't it a fact that in those trains you also carry in the course of your business, a lot of grain, empties and various classes of traffic that you have ready to go through?

A. If we have not high class freight we fill up with dead freight tonnage.

Q. Do you have local trains that do local work?

A. Yes sir.

Q. Getting the stuff out from Kansas City to Omaha and distributing it to the various stations over the division?

A. We have local trains on all our divisions.

Q. You mean local trains—How many local trains do you run out of Kansas City and Omaha per day, east bound?

A. We have one regular schedule local train.

976 Q. At each place?

A. Yes sir.

Q. That local train gets over the first division that day?

A. Yes sir.

Q. It is intended to do that without making over-time?

A. Yes sir.

Q. That local train picks up live stock that happens to be loaded for shipment at the different stations?

A. No, we generally start an extra local train to pick up the live stock. I refer to the schedule local train which we term our way-

freight train, carrying merchandise and distributing empties and picking up grain and other freight, other dead freight.

Q. They don't pick up live stock?

A. Not as a rule, not on our main line. They do on our branches.

Q. And when you have got live stock to ship, you send out an extra local to pick it up?

A. Yes sir, on our main lines.

Q. And they pick up these and assemble them at the division points?

A. They center them at the division points and as far as possible make a through train from that point.

Q. What are the items of expense of that local extra, picking up live stock for example, from Council Bluffs east to your first division point?

A. Well, we are obliged to start the train out light. It depends on the number of cars that are reported to be picked
977 up at the different stations. The expense of switching those cars into the train, watering the stock and running the train out with light tonnage, lighter than they would take if they had the average train.

Q. I am talking about the expenses.

A. That enters into it.

Q. It is less expensive to run your train out light, as far as it runs, than it would be if it were loaded, wouldn't it?

A. For that distance, although the switching——

Q. I am going to ask about that. You start that train out from Council Bluffs and you run it light with an engine and a caboose. Your coal consumption is very much less on that run than it would be hauling a train, isn't it?

A. Up to the next station it is.

Q. And your pay for your crew is exactly the same?

A. Yes sir.

Q. And the wear and tear of a train is not present in that sort of a run, it is only the wear and tear on the engine and the caboose?

A. That is all.

Q. The wear and tear on your track is not the same as it would be in the case of the train, would it?

A. No sir.

Q. Now, we will say that you stop at a station out 10 miles and you pick up three cars. To do that your engine cuts loose
978 from the caboose and runs up to the switch, backs in and picks those cars up and takes them up to the caboose, don't it?

A. Yes sir.

Q. Is it not a fact, Mr. Simpson, that it is less expensive than it would have been to have hauled those three cars the 10 miles from the Missouri river to that station?

A. No, I don't think it is.

Q. On what principle can you claim that it costs as much to go in there and switch those three cars out as it would to haul those three cars ten miles?

A. The consumption of coal is greater, and oftentimes the payment of overtime to our train and engine men.

Q. Do you claim that it costs you more to cut the engine loose from the caboose, back into the switch and get those cars and switch them into the train, that it takes more coal to do that than it would to have hauled those cars, ten miles?

A. Yes sir.

Q. Do you swear to that?

A. I swear that it costs more to run a pick-up train than a through train.

Q. Well, we are not talking about that. We are getting into the details of it now. I am asking about those three cars that we are assuming you picked up at the first station. You testify that it would cost you more money for consumption of fuel to back in and get those cars and bring them into the train than it would to carry them ten miles?

A. I could not say exactly as to that.

979 Q. Don't you know that it would be preposterous, Mr. Simpson?

A. Well, it depends on the amount of switching that would be required to get at those three cars.

Q. I am simply assuming that you back in and get them and pull them out?

A. If they happen to be head-end cars it would probably cost less to pick those cars up than it would to run those three cars ten miles.

Q. Well, make the switching as long as you please——

Mr. DAWES: Well, call it an eight mile switch.

Mr. COWAN: There never was such a thing.

Q. You run these three cars on to the next station, ten miles and get three more cars?

A. Yes sir.

Q. And the same thing is done?

A. Yes sir.

Q. Don't you know as an operating man that it costs you less in the expenditure of fuel to get those three cars out of the siding, and put them into the train than it would cost to haul the through cars ten miles?

A. No sir, I don't. You must understand that those three cars are not always the head three cars. Often times we are obliged to handle 40 or 50 cars in order to get those 3 cars out into the train.

Q. The three loaded cars.

A. Yes sir.

Q. Are you certain that that is true?

A. It is an every day occurrence.

Q. Do you mean the loaded live stock cars? How do they

980 ever get them loaded?

A. I did not know that you were talking of live stock. I thought you were speaking of dead freight.

Q. I am talking about live stock. I am talking about the expense of running your extra local trains to pick up live stock?

A. We were talking about our local way-freight train.

Q. No, no, I am talking about live stock. Now, since you understand that I mean live stock, do you claim that it costs you an expenditure of more coal to get them out and put them into the train, than it would to haul them ten miles?

A. I should say if these cars were convenient to pick up that the expense would probably be a little less although you could not demonstrate that without an actual test.

Q. The less the engine pulls, the less the consumption of fuel, is that not true?

A. Naturally, but if——

Q. Well, then——

Mr. SEVERANCE: Let him finish his answer.

A. (Continued.) It consumes coal to do switching, you must understand, as well as hauling tonnage.

Mr. COWAN:

Q. Why does it consume coal to do switching?

A. Because you are pulling tonnage. Every time you move your engine you are consuming more or less fuel.

Q. And the more you move your engine the more fuel you
981 are consuming?

A. Naturally.

Q. And the more weight you pull with the engine, the more fuel you are consuming?

A. Yes, that is at a given speed.

Q. Now, Mr. Simpson, proceed to the next station, we will assume that it is ten miles further, and that would be 30 miles from Omaha and there you get ten cars and switch them into the train. Isn't it a great deal less expensive to take those ten cars out and put them into the train than it would have been to have hauled them from the Missouri river up to that point?

A. It may be at that point, but if you will start out at the Missouri river with 30 cars and run that train right through, or if you will start out at the Missouri river with an engine and caboose and pick up 30 cars at ten different stations, my experience has been that it would cost you more to pick up those 30 cars at ten different stations than it would to haul 30 cars through from the Missouri river to the next division point.

Q. You say your experience has been that?

A. Yes sir.

Q. Awhile ago when I asked you what the relative consumption of fuel was in a train of live stock and in a train of dressed meat or dead freight, you said you could not tell without a test. Did you ever test that proposition?

A. Yes, we did with a given number of cars.

982 Q. Well, did you ever make a test of the cost of running one of those extras out of the Missouri river and picking up a train of live stock, compared to hauling a full train of live stock to the division point?

A. Yes, we have made that test.

Q. When did you make it?
A. It has been within the last year.
Q. Who were the parties that did it?
A. Our mechanical engineer, Mr. Harvey.
Q. Where is he?
A. At Milwaukee.
Q. You were not present when the test was made?
A. No sir.
Q. You don't have personal knowledge of what it cost?
A. I can get that information.
Q. Well, why not get me the man who claims to know?
A. I can do that.
Mr. DAWES: Do you want him as a witness?
Mr. COWAN: I do if they are going to claim that it costs more to run this train.
Q. Were you present at the test that you speak of, that the mechanical engineer made?
A. I was not.
Q. On what division was that made, what line?
A. It was made on several divisions. I could not say now without seeing the report. I had a statement but I have not it with me.
983 Q. What sort of trains were they?
A. They were our through dead freight trains, our through stock train, and our through meat train, and our local dead freight, stock and meat trains.
Q. You have not at present the definite figures to state what the relative costs were?
A. No sir.
Q. Do you claim that it costs you more per train mile to run your live stock train than it does your dressed meat and packing house product train per train mile?
A. No sir, I don't make that claim.
Q. If you haul a train of a thousand tons and another one of 800 tons, at the same rat- of speed, what in your opinion would be the difference in the coal consumption per hundred miles?
A. It would be cheaper to haul the 800 tons.
Q. By how much?
A. Two tenths.
Q. 20 per cent.?
A. As far as the consumption of coal is concerned.
Q. You mean that would only be as to the consumption of coal?
A. Yes sir.
Q. All the other items of train service and engine service would be practically the same, would they not?
A. Yes sir.
Q. The oil and fuel and waste per mile run, is that much different whether it is run fast or slow?
984 A. There is a difference.
Q. How is that?
A. There is a difference.

Q. But in cents it would be very slight, would it not?

A. Well, although there is a difference, it is covered by the rate of speed and the tonnage hauled.

Q. But the proportion of oil and waste, is so small and the other items of expense, that it would practically be nominal?

A. In one train.

Q. It would take more oil and waste for a train of a thousand tons than it would for the 800 tons?

A. Yes sir.

Q. Is it not a fact that a heavily loaded car, one of your grain cars which on your road averages 57,000 pounds, or did in 1902, the average grain load with the weight of the car will injure your track more than the live stock car that weighs one third less?

A. Well, that would depend on the rate of speed the two cars were run.

Q. Well, suppose it is at the same rate of speed.

A. I should say the heavier the car the more it would wear out the tracks and the rails.

Mr. DAWES: Do you say anything about speed in that connection?

A. He said the same rate of speed.

Mr. COWAN:

985 Q. Now have you in your mind a definite opinion resulting from experience as to the difference in cost per mile or per hundred miles of a train, one run at 20 miles an hour and one run at 25 miles an hour?

A. No, I have not those figures in my mind although they are a matter of record. I could produce the figures showing the comparative cost.

Q. Isn't it a fact that in heavy tonnage in the operation of a railroad, that you have to get your train over the road and out of the way and you can do that better than you can to be eternally side tracking these trains for others, and passing them going in the same direction?

A. That depends altogether on circumstances. We occasionally get a dead freight train mixed up with our stock trains, and if it is not convenient to side track it, we will run it at a higher rate of speed in order to get it out of the way of the stock train, but as a rule our dead freight trains are side tracked to let our stock and meat trains pass.

Q. What is the principal expense in the wear and tear of a train in running over say, a division of 100 miles?

A. The wear and tear of the equipment and track.

Q. Now, isn't there more wear and tear on the stopping and starting, on the equipment, a great deal more than there is in the steady running?

A. Yes, I should say there was.

986 Q. Do you know what operating men consider the relative expense of stopping and starting to the actual running?

A. We know what it costs to stop and start our train of given tonnage.

Q. Tell us what that is?

A. I could not say now, I have not those statistics with me.

Q. Is it a greater or less expense in the way of expenses for repairs than that which is incurred in the actual running between stopping and starting?

A. It costs more to stop a train than it does to keep it running.

Q. That is because in setting the brakes you get the wear on the wheels and you get the wear on the tracks?

A. Yes sir.

Q. And you may set it too tight, tight enough to slide the wheels and splinter your track?

A. Yes, and often times you will pull out a draw-bar.

Q. And the injury to freight in the car is done by the stopping and starting?

A. That is what increases the cost of our local trains.

Q. When you start a stock train out from one of your divisions, after you have got a full train, for what purpose need that stock train stop if other trains are not given preference over it?

A. A full train of stock?

Q. Yes sir?

A. Well, only for coal and water and occasionally to shower the stock if it is hogs.

987 Q. Well, that only applies in the hot summer months?

A. Yes sir.

Q. Now, isn't it a fact that you run that train over a division of 100 miles with less wear and tear on the equipment than you would a local train, no matter how slow it runs that stops at every station? In the matter of wear and tear, won't it be more on the local train that stops at every station, necessarily, than it would be on the stock train that runs through on the division without stopping except for water and fuel?

A. Well, I should say that if it was run at a high rate of speed it would cost more, it would wear out the track faster.

Q. How is that?

A. It would wear out the track faster.

Q. I am talking now about the equipment, the cars and the engine.

A. It costs more to stop the train.

Q. So that that expense on the local train that stops at all these stations and runs slow would be greater than it would be on the live stock train?

A. I don't quite catch your meaning.

Q. Well, I will ask the question. Would it not be less expense to run a live stock train that runs steady, as far as the wear and tear of the equipment is concerned than it would the local train that stops at each station?

A. I should say it would be less.

988 Q. How much greater would be the wear and tear on the track for a train running 25 miles an hour and one running 15 miles an hour?

A. I could not say how much greater it would be.

Q. In what does that consist?

A. I should say that the higher rate of speed you ran the train the faster it wears out your tracks. The wheels would pound the rails and necessarily wear them out faster than at a slow rate of speed.

Q. You have mentioned the pounding of the rails?

A. Yes sir.

Q. That is simply at the joints, isn't it?

A. How is that?

Q. That is simply at the joints, there is no pounding of the rail except at the joints?

A. Occasionally there is pounding between the joints, especially if you have a flat wheel.

Q. You have no business to run flat wheels?

Mr. SEVERANCE: Just remember that, will you?

Mr. COWAN:

Q. Do you know whether it increases the cost of the maintenance of your track in proportion to the number of trains you run over these divisions where you run fast than over these divisions where you run slow?

A. I have not any figures to show that.

989 Q. It is a very inappreciable difference on your road, isn't it?

A. I could not say, I have not the statistics.

Q. You were asked yesterday evening to furnish a statement of train conductors' books showing the train consists out of Savanna east bound for the first fifteen days of October and February, 1904. Did you bring those, Mr. Simpson?

A. Yes sir.

Q. You have them?

A. Yes sir.

Q. Have you examined them to see what the consists were?

A. I have not, they just got in.

Q. I won't take your time on the stand to do it, but I will ask you to compare it with the statement that I have here that I spoke to you about yesterday.

A. All right.

Q. Do you know how much damage claims were paid by your road for dressed meat and packing house product for the year 1905?

A. I have not the amount paid in the year 1905 but for the calendar year of 1904, the claims paid for damages on dressed beef and packing house products were $3,769.58.

Q. How much?

A. $3,769.58.

Q. That is the total amount paid?

A. Yes sir.

Q. Have you a statement going back for years before?

A. No sir.

990 That is on dressed beef and packing house product arriving in Chicago.

Q. Oh, well, I want the total; have you got that?

A. I think that only refers to freight arriving in Chicago.
Q. Well, now did you examine the records to get that or did somebody furnish it to you?
A. No, that was furnished by our claim department.
Q. What is the name of your freight claim agent?
A. Mr. H. B. Elliott.
Q. Where does he keep his office?
A. In the Railway Exchange Building.
991 Q. Now, isn't it a fact, Mr. Simpson, that in making the estimate on the dressed meats arriving in Chicago, excluded that which was shipped from the Missouri River and passed around Chicago east bound?
A. Well, this information is not very definite. I would not say positively that that refers only to this class of freight arriving in Chicago, but I am under that impression.
Q. It is not of much value unless you knew which cars were used from which to make the statement.
A. I can give you that information.
Q. What is the difference in cost per train mile in operation of your road between Chicago and St. Paul and between Chicago and the Missouri River?
A. I could not say.
Q. Is it greater or as much expense on the one as on the other?
A. I think the cost is a little greater between Chicago and the Missouri River. That is my impression.
Q. What is the prevailing grade on your line between Chicago and St. Paul?
A. You mean on each division?
Q. I thought you had some standard grade.
A. The ruling grades, do you mean?
Q. Haven't you some standard prevailing gradient on your road?
A. Yes, we have grades out of Milwaukee, coming south bound towards Chicago——
Q. You don't understand what I mean. Don't you have some standard gradient, six-tenths per cent. or one per cent.?
992 A. Do you mean the maximum grades?
Q. Yes.
Q. I cannot say what our maximum grades are between here and St. Paul.
Q. Do you know what they are on your division between here and the Missouri River?
A. No, I could not say at the present time.
Q. Isn't it a fact that your first division out of the Missouri River, east bound is more expensive to operate trains in this direction on than the balance of your road on to Chicago?
A. I think it is, slightly.
Q. How is that?
A. I think it is, slightly.
Q. That is because of the grades and curves coming out of Kansas City and Omaha?
A. The grades, principally.

Q. I understood you to state yesterday that your stock cars were idle a great portion of the time?

A. Yes, sir.

Q. Is that just a guess, or have you got definite figures to show what your stock car mileage was per month?

A. I know that in the fall months and during the winter months they are in more active service than they are in the summer months.

Q. Please speak louder.

A. In the fall and winter months they are in more active service than in the summer months.

Q. Well, now, what do you mean by the summer months,
993 just season summer months?

A. June, July and August. The stock movement is heavier in the fall and winter months than in the summer months and consequently our stock car equipment is in more active service.

Q. Now, you mean to the markets, do you not?

A. How is that?

Q. You mean to the markets?

A. Yes, sir.

Q. Isn't it a fact that in the months of May and June, that you haul some thousands of cars into your Western South Dakota station, Everest, of stock cattle movement?

A. Feeders?

Q. No. The movement of Pan Handle cattle?

A. That is what we term feeders. We receive them at Omaha and Kansas City and move them up onto the ranges.

Q. Those are not feeders, those are range cattle. They are not called feeders.

A. Well, they are going out to feed.

Q. Those are the months that you have the least use for your stock cars to the markets?

A. When the range stock is moving from the southwest and northwest we have a very good demand for our stock cars. After that is over the demand is quiet until the fall months, when our range stock commences to move to market. At the same time our local stock is moving quite heavily.

Q. Your demand for stock cars and the time of the de-
994 mand is reflected in the reports of the stock yards companies, the number of cars you take in and take out, isn't it?

A. Yes, sir, as a rule, it ought to be.

Q. What do you say in regard to the number of cars that you use per month, as to whether it would be subject to what the stock yards reports show that you use, so far as the markets are concerned?

A. You refer to the Chicago Stock Yards?

Q. Chicago, Omaha, Kansas City, Sioux City and St. Paul.

A. And Milwaukee?

Q. Well, I haven't got the Milwaukee report, but that is a very small item. That is true, is it not, that the stock yards reports reflect your business to the markets?

A. Yes, sir.

Q. Is it not a fact that in the month of August that you are

shipping in from Everest range cattle, and that you have the active use of your stock cars for that purpose?

A. That movement don't commence until the first of September.

Q. Are you certain of that?

A. Yes, sir.

Q. How do you know that fact?

A. I get reports from each train.

Q. You were shipping in an abundance of cattle here in August, were you not, here to Chicago?

A. From Everest?

Q. Was not a large Cattle Company shipping in cattle here
995 in the middle of August, and was not Mr. McKenzie, the Manager of that company here at the time?

A. I was under the impression that that commenced the first of September.

Q. I know, but your impressions were wrong.

Mr. DAWES: I object to that.

Mr. COWAN: Well, I asked him if he knows it to be a fact. Do you recollect Mr. McKenzie being here?

A. Yes, it is possible the movement commenced a little earlier.

Q. And that depends on the season and the time at which the cattle get ready out there?

A. Yes, sir.

Q. Some years it is earlier than others?

A. It generally moves about the same time.

Q. When is your heaviest movement from Iowa points into Chicago, do you know?

A. The heaviest movement from Iowa is generally in the fall months.

Q. You said yesterday evening, when you said the total amount of damage claims was $66,029.24, paid on live stock, that that applied to stock which was moving to Chicago?

A. Yes, sir.

Q. What additional damage claims did you pay to any other live stock movement than the $66,029.24?

A. I could not say.

Q. Isn't it a fact that that was your total claims?

996 A. No, sir, that is only the stock arriving at Chicago.

The COURT: That is made on the same data or basis that you make the dressed meat damage statement on?

A. Yes, sir, although I am not positive as to the shipments the claims were paid on dressed beef, what that covers, whether that is only Chicago, or covering the entire system.

Mr. COWAN:

Q. Have you examined the records to see whether this $66,000 does not cover your total payments for claims on shipments of live stock?

A. No, sir, I have not examined the records. It is a statement made by our Claim Agent.

The COURT:

Q. He says that that is to Chicago only?
A. Chicago only.

Mr. COWAN:

Q. Mr. Elliott is the Claim Agent?
A. Yes, sir.
Q. And the reason you say it is Chicago only is because the Claim Agent says so?
A. Yes, sir.
Q. Did he tell you that or just write it down?
A. He gave me a statement.
The COURT: His statement shows that?
A. Yes, sir.

Mr. COWAN:

Q. What was your loss and damage to dead freight?
997 A. I have not that information.
Q. It is contained in your annual report?
A. I think it is.
Q. Well, it is immaterial to hunt it up now, but it is something over $400,000.

Mr. DAWES: Is that testimony?
Mr. COWAN: I am going to introduce it.
The COURT: It is a monologue.

Mr. COWAN:

Q. How many drovers' cabooses do you use altogether?
A. The latest style of drovers' caboose, we have 142. Those cars are provided with berths, with 12 berths. We have other drovers' cabooses with a less number of berths, the total number of them all, all cabooses provided with berths is about 200, although I have not the exact number.
Q. They are used altogether east of the Mississippi River?
A. We use the standard drovers' caboose altogether east of the Mississippi River, yes, sir.
Q. Are there any cabooses which are used—are not they cabooses which are used in dead freight as well as live stock trains, or are they used just on live stock trains?
A. Occasionally they are used on dead freight trains.
Q. Mr. Simpson, you handed me three printed annual reports of the Chicago, Milwaukee & St. Paul Railway Company,
998 for 1904, 1903 and 1905. You identify them as being the annual reports of that company?
A. Yes, sir.
Q. The statistics contained in those reports are correct?
A. I could not say.
Q. Well, they are regarded as correct, are they not?
A. Supposed to be.
Q. That is the source to which you resort for information?

A. Yes, sir.

Mr. COWAN: I will offer those in evidence.
The COURT: You had better put them in altogether.
Mr. COWAN: I am not going to offer them now.
Mr. SEVERANCE: You are not offering them now?
Mr. COWAN: No.

Q. Those are the annual reports that are made up from the books and statistics in your office, are they not?
A. No, sir, not in my office.
Q. How is that?
A. Not in my office.
Q. Well, in the company's office?
A. They are prepared by the president and chief auditor.
Q. You don't question but what they are correct, do you?
A. I never have.
Mr. DAWES: Well, suppose he did?

999 Examination by Mr. LYNDE:

Q. You, as Superintendent of Operation, what do you have to do with the actual running of trains on your road?
A. My title is Superintendent of Transportation. I have nothing to do with the operation of the trains on the different divisions more than a general supervision in arranging the schedules.
Q. You are not personally qualified, are you, to testify as to the cost of operating trains or the consumption of coal, and so forth, from your own personal knowledge?
A. Not from my own personal knowledge, no, sir.
Q. Whatever you have said in that regard is from statements made to you?
A. Prepared by our mechanical engineer, yes, sir.
Q. Now, as to the speed of your trains: What do you know as to the speed at which those trains move on your road?
A. I only know the speed of our regular schedule trains, and the speed of our Montana and Everest stock train.
Q. Those are the through stock trains?
A. Those are the through stock trains and they are reported to my office.
Q. How about the speed of this local pick-up stock train?
A. I don't keep a record of them.
Q. Do you know anything about it of your own knowledge?
A. No, sir, I have no personal information as to the speed
1000 that those trains actually make.
Q. Do you know, as a matter of fact, whether it is not true that those trains run at a higher rate of speed between stations than your regular schedule through stock trains generally?
A. Well, I could not answer from my own personal knowledge, I never see the train sheets. They are kept in our division offices.
Q. You have stated that it is uncommon between the Missouri River and Savanna for meat trains to be side tracked to let a stock

train go by. You say that this is done only very occasionally. I understood you to state that, is that correct?

A. It is very seldom done.

Q. How is it between Savanna and Chicago?

A. It is very seldom done there, between Savanna and Chicago. As I stated, we occasionally start out our stock trains from Savanna ahead of our meat trains.

Q. On what days of the week do you have your stock movement in Chicago?

A. As a rule Monday and Wednesday are generally considered the heavy days.

Q. Which is the heaviest day?

A. Monday morning, as a rule.

Q. Do you run any meat trains on Sunday, coming from the west, starting Sunday from Council Bluffs?

A. No, sir.

Q. So there is not any meat train to side track for the
1001 purpose of your Sunday movement of live stock?

A. Very seldom.

Q. How many trains, when you have a large run of stock on your road, how many live stock would you bring into Chicago Monday morning?

A. That varies.

Q. Give us some idea.

A. We run from 400 to 600 cars of stock.

Q. Well, I am asking for a large movement in the heavy stock period. I would like to get what you consider, not the average, but the large movement?

A. Well, 600 cars would be a large movement for us.

Q. How many trains would that make?

A. That would make in the neighborhood of about 25 trains.

Q. That is the Sunday movement that I am referring to?

A. Yes, sir.

Q. When will these trains begin to come into Chicago?

A. They commence to arrive about midnight Sunday night.

Q. How far apart will they be in their arrival here at Chicago, on the average?

A. Between Savanna and Chicago we have the heaviest movement, and those trains are as a rule run about a block apart.

Q. Well, now, Mr. Simpson, is it a fact that you permit anything on your road to stand in the way of the running of those trains during that movement?

A. Stock trains?

Q. Yes?

A. No, they generally have a clear track.

1002 Q. Don't you aim to give a clear track to these stock trains so that they can follow each other, as you say, about a block apart?

A. Over everything except our passenger trains. Of course if they are late and get mixed up with our through passenger trains,

we are obliged to side track them but they generally get in ahead of our through morning passenger trains.

Q. This movement of trains that come in that way about a block apart, are not running on any schedule time, are they?

A. No, sir, they are not schedule trains, they are running extra.

Q. They are running extra, all of them?

A. Yes, sir.

Q. Isn't it necessary to maintain a high rate of speed between Savanna and Chicago, to bring those trains in so as to have that stock delivered in time for the market Monday morning?

A. Yes, sir, stock coming into Savanna late Sunday night we are obliged to run at a very high rate of speed, twenty-five or thirty miles per hour.

Q. The later the stock starts from Savanna, the greater speed between Savanna and Chicago?

A. Yes, and the lighter the tonnage in order to make that fast time.

Q. How far apart in point of time is it that those trains arrive here in Chicago Monday morning?

A. Why, I should say the average time would be about 25 minutes apart.

1003 Those trains are delivered by your Company at the Stock Yards, are they?

A. Yes, sir.

Q. Do you change the crews?

A. No, sir. Stock coming in by the way of Savanna, our main line crews take it to the yards. Coming in from Milwaukee our switch crews take it from Pacific Junction.

Q. Now, about this operation of stopping and starting a train: I think you stated that the stopping and starting of a train cost more wear and tear than to run a train right along continuously?

A. More wear and tear on the equipment.

Q. Isn't it a fact that the stopping and starting of the engine in the switching movement causes more consumption of coal and more wear and tear on the equipment than the running of the train right along?

A. It is generally conceded that it does.

Q. Every time the engine comes to a stop in the switching movement and is started up, there is a considerable increase in the consumption of coal, isn't there?

A. I understand there is.

Q. You have observed that, haven't you?

A. Yes, sir.

Q. What do you know about this operation of cleaning cars on your road, of your own knowledge? What observation have you given to it yourself?

A. We aim to clean——

Q. I am asking about your own personal knowledge. How

1004 far is that matter under your jurisdiction?

A. I have never seen the cars cleaned myself. I make the arrangements for having them cleaned, however.

Q. Do you know about the amount of bedding in the cars, how much is it, on the average?

A. Well, that depends on the length of time the cars have been in service since they were last cleaned.

Q. Well, would it run as high as two tons?

A. We have had them that heavy.

Q. That I think you said was sand or gravel in your cars?

A. We use sand and gravel on some of them principally for shipments of hogs. Cattle we generally use straw or hay for.

Q. Generally straw or hay on the cattle?

A. Yes, sir.

Q. Now, in the winter time, of course, that bedding—the cars are open, are they not?

A. Yes, sir.

Q. It becomes frozen, doesn't it?

A. Yes, sir.

Q. Where do you do your cleaning?

A. We do most of it at Sabula, Iowa.

Q. You move all the stock cars out there from Chicago?

A. We don't move all of them, we move, I should say, 75 per cent. of them there.

Q. Do you have any special facilities there?

A. We have an old gravel pit where we have put down tracks, where we can clean the cars without causing complaints. It is away from any town.

1005 Q. How far away?

A. It is about two miles from Sabula.

Q. Switching the cars in there and then switching them out, to clean them?

A. We send them there from Savanna. Savanna is our division station between Illinois and Iowa. The trains run to Savanna and then we send the stock cars from there over to Sabula. When they are cleaned we send the engine over to pick them up and distribute them.

Q. How far is that from Savanna?

A. It is about five miles.

Q. Those tracks, are they used for any other purpose?

A. No, sir.

Q. You were asked a contract price of cleaning the cars. That includes simply the cost of labor?

A. Yes, sir.

Q. Are all your cars cleaned by contracts?

A. No, sir, we clean a large number of them with our section men.

Q. The time taken in the cleaning operation varies very much, doesn't it.

A. We aim to clean them when the cars are not actively employed in the stock business.

Q. Explain that, what do you mean?

A. When the shipments of live stock are light and the cars are not needed in that service, we aim to clean our stock cars.

Q. You don't clean your stock cars then after they are brought

in here with a load of live stock, here to Chicago, necessarily,
1006 before sending the same car out?

A. Oh, no.

Q. You clean them, then, from time to time, just as it is convenient, is that right?

A. Just as it is convenient from time to time, yes. I presume our stock cars are cleaned probably three or four times a year.

Q. Is that all?

A. I don't think it will average more than that. They are so bu*d*y we are unable to spare them. We have to keep them in service.

Q. If you have your cars out to clean them after every trip into Chicago, it would deprive you of the use of a large percentage of your cars, wouldn't it?

A. It would.

Q. How many do you have down there in your cleaning yard?

A. How many at one time?

Q. Yes.

A. We generally set in 40 or 50 at a time.

Q. How long will it be before they are taken out and brought back to Savanna?

A. Why, it generally delays them about 24 hours to clean that number of cars.

Mr. LYNE: I think that is all I care to ask him.

Recross-examination by Mr. COWAN:

Q. You try to keep your cars in as good condition as your competitors, don't you?

1007 Mr. LYNDE: That is objected to.

The COURT: Objection overruled, he may answer.

A. I don't know what the condition of our competitors' cars is.

Mr. COWAN:

Q. Do you know anything about how often they clean theirs?

A. I do not.

Q. You know they are not cleaned on every trip, though, don't you?

A. I don't know anything about it.

Q. You answered Mr. Lynde that you have personally observed that it cost more fuel to stop and start an engine than it did to keep it running. How did you come to observe that?

The COURT: You have been all over that. He went over it before, he has gone over it.

Mr. COWAN:

Q. Is it not a fact that in handling your grain you are at considerable expense in the operation of elevators and supplying——

Mr. DAWES: That is objected to.

The COURT: Objection sustained.

Mr. COWAN:

Q. You stated that there was a certain amount of expense per yard for maintaining stock yards?

The COURT: I do not think they brought out anything new
1008 but what you have gone over.

Mr. COWAN:

Q. Your annual report shows that for the year 1905 the total expenditures for the maintenance of stock cars and elevators was $52,517.

Mr. SEVERANCE: That is objected to. This statement is not in evidence.

The COURT: I think you have been over it.

Mr. COWAN: I want to ask him how much of that was for elevators. I don't want to take the time of the Court, but the item here is "Stock Yards and Elevators." I wanted to find out how much of that was for Stock Yards.

Mr. SEVERANCE: There is no evidence in the record of any such thing.

The COURT: You can introduce that in evidence later.

Mr. COWAN: Well, that is all.

The COURT: Call the next witness.

Mr. SHAVER: I would like to ask a few questions.

Examination by Mr. SHAVER:

Q. The cost to the carrier of the service rendered in the transportation of products or the handling of traffic is at the two terminals and on the intermediate haul between the terminals, is it not?

A. Yes, sir.

Q. Are the expenses at the two terminals considerable or
1009 inconsiderable as compared with the other expenses?

Mr. SEVERANCE: I object to that, as asking for a mere conclusion. That would not mean anything if he got an answer.

The COURT: Well, let him say. What do you say about that?

Mr. SEVERANCE: He might think one thing was considerable that another man would not think was considerable.

The COURT:

Q. Can you tell about that?

A. I cannot answer. It depends on the terminals and the number of local stations between the terminals.

Mr. SHAVER:

Q. Are not the terminal expenses considerable or are they inconsiderable?

Mr. SEVERANCE: I object to that, for the same reason.

The COURT: Objection sustained. It is according to how long the haul is.

Mr. SHAVER:

Q. Are not the terminal expenses a very important item with any carrier?

A. I should say they were.

Q. Bryant is a station on your road, and also Austin?

A. I beg pardon?

Q. Bryant is a station on your road and also Austin?

A. Yes, sir.

1010 Q. I believe that hogs are shipped from Bryant to Austin where they are manufactured into product?

A. Bryant, South Dakota?

Q. Yes.

A. I could not say as to that.

Q. Where hogs are shipped, say from Bryant to Austin, and there manufactured into product, and the product is then shipped on to Chicago, are there not two distinct hauls and the expense of four terminals? One terminal at Bryant when the hogs are shipped; one terminal at Austin when the hogs are unloaded there, a third terminal when the product is shipped out of Austin, and a fourth terminal at Chicago?

Mr. SEVERANCE: Anybody would know that.

The COURT: Let him answer.

Mr. SHAVER:

Q. That is four terminal expenses?

A. Yes, sir.

Q. When the hogs are shipped direct from Bryant to Chicago, the shipment is a through shipment, is it not?

A. Yes, sir.

Q. And there are only two terminals, a terminal at Bryant and a terminal at Chicago, two sets of terminal expenses?

A. So far as that particular shipment is concerned. You understand that we change engines and cabooses on every division, but we don't——

Q. I don't understand you.

A. We change engines and cabooses on every division, at

1011 every division station, but that car would not be unloaded and reloaded at every division station.

Q. Aren't through rates, as a rule, made lower per mile than the rates for comparatively short distances, local rates?

A. That is our of my department. I am not qualified to testify as to rates. That is a traffic matter.

Mr. COWAN:

Q. I wish you would get a statement showing the number of packing house product and dressed meat cars delivered at Chicago, to which the statement of damage claims applies, unless you have it there.

A. I can give you that.

Q. You have not the number of cars delivered in Chicago?

A. No sir.

Mr. SEVERANCE:

Q. Counsel asked you a moment ago about shipments of live stock from Bryant, South Dakota to Chicago.

A. Yes, sir.

Q. That is 632 miles, isn't it?

A. I could not say.

Q. Well, you know your own system, don't you? That is, haven't you any idea whether that is about what it is?

A. I should say that is about the distance.

Q. How quickly can you run a train of live stock from there, Bryant, to Chicago?

A. At that distance we would be obliged to unload——

1012 Q. That is what I want to know. I will come to that directly. How long does it take to run through?

A. Including the time for rest, feed and water?

Q. Yes.

A. About 48 hours.

Q. And you have to unload to feed and water the cattle en route?

A. Yes, sir.

Q. That takes you—I mean the hogs—any kind of live stock. How long does that take?

A. Not less than five hours.

Q. Now, you have just as much expense in unloading those hogs and feed and water them and in loading them again on the train when you start them on their way to Chicago as you would if you unloaded them at Austin and loading the product, don't you?

A. Yes, sir.

Q. In fact, you have a greater expense because the product is loaded by the manufacturer himself, isn't that so?

A. Well, the expense would not be very much greater. We would run the car, on arrival at Austin, up to the stock yards and unload it. Then we would run the car to the packing house product and reload it. At Savanna where we would unload for feed, rest and water, we would do the same thing, practically.

Q. You don't understand my question. The matter of loading the packing house product into the car at the packing house is performed by the packer, isn't it?

1013 A. Yes, sir.

Q. The work of reloading your live stock into your car at Savanna is done by your own employés?

A. Yes, sir.

Q. So you have the same four terminal points that counsel spoke about in the case of the shipment of live stock through to Chicago from this point in South Dakota that you would have if you unloaded and manufactured them en route, don't you?

A. Yes, sir.

Mr. SHAVER:

Q. When hogs are shipped from Bryant direct to Chicago are they shipped through Austin?

A. Yes, sir.

Q. The aggregate haul on the shipment of live hogs from Bryant, if brought on to Chicago, is the same as the length of the haul from Bryant via Austin, and then direct to Chicago?

A. Yes, sir. Occasionally Bryant shipments would be routed by Sioux City, in order to take advantage of that market, but the distance is about the same.

1014 Q. You stated that the shipments from Bryant direct to Chicago were through Austin, that is the rule isn't it?

A. That is the rule, yes sir.

Q. Then the distance in both instances is the same?

A. Via Austin and via Sioux City, do you mean?

Q. No; where hogs are shipped to Austin?

A. Yes sir, the distance would be the same.

Q. And manufactured there and then passed on to Chicago, the aggregate distance is the same as when they are shipped direct from Bryant to Chicago?

A. Yes sir.

(Witness excused.)

A. B. STICKNEY, thereupon resumed the stand as a witness in behalf of the defendants, and testified as follows:

Cross-examination by Mr. COWAN:

Q. Mr. Stickney, have you a statement of the number of packing house product and fresh meat cars hauled by you into Chicago, to show the proportion on the 18½ cent rate from Missouri River, and the proportion on the 20 cent rate?

1015 A. I have no such statement here. A statement can be prepared.

Q. Will you be kind enough to furnish such a statement?

A. Yes sir. Will you make a memorandum of it Mr. Severance?

Mr. SEVERANCE: Yes.

The WITNESS: If you will make a memorandum of what statements you would like to have me furnish, I will furnish them.

Mr. COWAN:

Q. I was just inquiring if such a statement could be furnished?

A. Yes sir.

Q. Now, could you furnish a statement that would show the payments which were made on account of loss and damage of all sorts to the packers, or other shippers as for that matter of the packing house products and dressed meats? Your Claim Department has such an account separate from other loss and damage claims?

A. I don't think they are separated, but it would be only a matter of work to separate them, which I would be glad to do if you would like to have me.

Q. Thank you. Now, have you in mind, or have you with you a statement of the amount of loss and damage claims on live stock previous to the one which you referred to yesterday, I have forgotten what year that was, I think, 1905.

1016 Mr. SEVERANCE: That was the year 1905.
A. No, I have not such a statement.

Mr. COWAN:

Q. Will you kindly furnish that statement showing it for 1904 and 1903?

A. Well, do not make—it is a great deal of work to get up those statements, do not ask for any more than you need.

Q. I thought that was probably already made up from the books of the Claim Department.

A. No sir. It is a good deal of work to pick out those items. I will do anything you ask me to do, but——

Q. I will waive that statement for those years for the present, and inquire whether the amount of loss and damage claims on live stock paid in 1905, is more in proportion to the number of cars handled than in the years 1904 and 1903?

Mr. SEVERANCE: That involves the same thing.

Mr. COWAN: I am asking if he knows.

A. The statement I made is not of the loss owing to damage of cattle, but only the damages paid for not arriving in the market on time; that was the statement that I made.

Q. You mean that did not include the total loss and damage claims on cattle or other live stock?

A. Say, for instance, if we wrecked a train of stock and
1017 paid damages for that, that was not included in the statement I made yesterday. I went on the theory that the losses of that kind for the packing house products and the live stock were probably the same. At any rate I didn't have time to investigate that.

Q. You have paid damage claims to the various packers for shipments of—claimed by them to have occurred on shipments of packing house products and dressed meat, have you not, all along?

A. I have no doubt we have.

Q. Whatever that is will be shown in the statement requested?

A. Yes sir.

Mr. SEVERANCE: Not for delays, is it, Mr. Stickney?

A. Not for delays.

Mr. COWAN:

Q. Well, suppose that there was a delay though, at a place where it occasioned injury to the meat?

A. Well, that would be damage to the contents.

Q. That is what I am asking for, is damage of all sorts.

A. Damage to the contents of the packing house product and damage to the contents of the live stock is what I understand you to ask for.

Q. No, I am only asking for total damages paid to the packers. Now, I would like to have had the total damages paid on all
1018 live stock shipments, that is not on each, but on all, for the years that I have mentioned, that you said it would take so much work to make it up, and I said I would waive that.

Is it not a fact Mr. Stickney, that the live stock trains, and the packing house product and dressed meat trains originating on Missouri River move eastward through Oelwein, is that the name of the division point?

A. Yes sir.

Q. The relative sizes and consists of the trains moving eastward out of Oelwein, would represent largely the movement both of packing house product and dressed meat and the live stock, so far as the sizes of the trains are concerned, would they not?

A. I will have to ask you to state that once more.

(Question read by the reporter.)

A. Well, that question cannot be answered. I do not say that in an offensive sense, but it is not an intelligent question. We have on every time card a statement of the rating of the trains cut up into small distances as the varying grades vary. That is, the rating means the number of tons including the car and the contents which each engine must haul. An engineer, if he is loaded, if a yardman puts on more tons than that rating, the engineer is at liberty
1019 to refuse to haul the train. If there is no more tons than that rating, he is not at liberty, he must haul it. Now, then, there are three ratings, first, second and third. The first rating is the largest. The condition of the weather, the condition of the rail, whether wet or dry, are the factors mainly affecting those ratings. Now, if it is extremely cold weather, an extremely cold day, the train dispatcher or the Division Superintendent, I am not quite certain which, sends notice that the trains will take third rating that day, that is the lowest rating, that is the rating for extreme cold weather. If the weather is not cold and the rail is wet, the order will go out to take second rating, and that is the way the sizes of the trains are determined.

Q. Have you any records that would show the actual comparative consists of trains for consecutive days passing out of Oelwein eastward?

A. The record would show, we have a record that shows the gross tonnage, that is the weight of the car and the contents together. Every train that moves out of a division point, every freight train that moves on any of the divisions of the road has a theoretical—every Division Superintendent has a theoretical load that the train must haul, and a theoretical amount of coal that it may
1020 consume, ought to consume in hauling that train over the Division. Now, a record is made of every train, the amount it hauls, the number of gross tons it hauls and the amount of coal it consumes, and there is great competition between the different Divisions to make their record red or black. If they consume more coal than the theoretical quantity, it is a black record, and if they consume less coal than the theoretical quantity, it is a red record. We find this: That there are certain engineers on each Division who will have a red record every month; that is, they manage to haul their tonnage consuming less than the theoretical quantity. Other engineers will consume for hauling the same weight 50 per cent.

more than the theoretical quantity, and we make records of that every month and post them up in our round houses for the engineers to look at to see which one did the best work. The consumption of coal, while it has some relation, considerable relation to the tonnage hauled, it is also varied by the skill and efficiency of the firemen in making fires, and it is never in direct proportion to the tonnage hauled; that is to say, an engine going over the road light will consume some coal. You put a single car behind that engine and it might consume more, and it might consume less, depending altogether upon the skill of the fireman and the engineer in managing it. Then put another car on, it will not double the quantity
1021 of coal consumed, and how much more it will increase, nobody can figure out.

Q. Could you have a statement prepared that would show, not the theoretical, but the actual train loading of each train eastbound out of Oelwein for say, fifteen days of one month and fifteen days of some other month, six or eight months off, that would be representative of the actual train loading respectively?

Mr. SEVERANCE: Just a moment Mr. Stickney, before that is answered. Let me make a suggestion.

Mr. Stickney stated your Honor, in his testimony yesterday that he made no comparison between the coal consumption, or the cost of movement, that is the actual running of the trains as between live stock and packing house products, for he said that on the Great Western Road they were ordinarily hauled in the same train. Now, this testimony is all useful only for purposes of comparison, and as there has been no such comparison attempted as far as the Great Western Road is concerned, as far as Mr. Stickney's testimony is concerned on the contrary, he having stated that the product and the live stock were hauled in the same train, there could be no use for such a table.

The COURT: Your objection is that it is not proper cross examination?

1022 Mr. SEVERANCE: I object because it is not proper cross examination, and the table if prepared would be useless for any purposes so far as the Great Western Road is concerned.

The COURT: What do you say about that Mr. Cowan?

Mr. COWAN: I don't think it would be useless to show what the actualities are with respect*ive* to the respective sizes of the trains as a matter of fact, of live stock and of dressed meat and packing house products. If each has some of the other in the trains that carries either, of course, I would not care for it. I do not so understand that.

The WITNESS: On our road that is practically the case. It is very rarely the case that we run a full train load of live stock and nothing else.

The COURT: The objection is sustained. That ends that, ask him something else.

Mr. COWAN: There is one question I wanted to ask you, and I believe that is all, Mr. Stickney.

Q. You stated the actual cost of the stock yards on the Fort Dodge line, the new line which you built, as I understood you?
A. Yes sir.
Q. How do those stock yards in point of their size, their construction and equipment compare with the average stock yards on the other part of your line, are they better or not?
A. I should think they were a fair average.

1023 Redirect examination by Mr. BAXTER:

Q. Mr. Stickney, you made the calculation in your testimony yesterday showing the relative cost of transporting live stock as compared with packing house products and fresh meats. Had you made that calculation, or any similar calculation as to the relative cost before you made your contract with the packing houses?
A. No sir.
Q. Did you in making that contract have present in your mind what the relative cost of carrying live stock and packing house products was?
A. No sir.
Q. Is it not a fact that the attempt that is now being made by several railroad companies to ascertain, or at least to approximate the relative cost of different commodities, transporting different commodities, is of very recent origin?
A. Yes sir, I should say within the last ten years.

Recross-examination by Mr. SHAVER:

Q. Mr. Stickney, I understood you to say yesterday, that you believe in a rate under which the stuff, to use your language, would move, a rate under which the traffic will not move is pro-
1024 hibitory, is it your idea that any rate is reasonable which is not prohibitory of the movement of traffic?
A. Well, that depends upon what you mean by the word prohibitive. Now, I will state, take the passenger business, a few years ago, the rate on passengers was 5 cents a mile. Well, now, it was reduced to 3 cents a mile, and I think while, when it was reduced there was a good deal of misgiving on the part of a great many railroads that it would be detrimental, and it undoubtedly was in the first instance, or in the beginning reduced the passenger income, still by experiment, 3 cents a mile is generally considered now to be more profitable to the railroads than 5 cents a mile would be. And my opinion on rates is, that the rate which—I almost hesitate to say this because the language has been so construed and it will get into the papers in an entirely different way from what I state it—but my opinion is, the rate which, considering the future, considering the development of the country, the quantity to be moved, and everything, the rate which will give the railroad company the most net earnings is the right rate.
Q. May there not be a margin between a reasonable rate and a prohibitory rate?

A. That in my judgment, is the reasonable rate. Now,
1025 I do not think a 5 cent passenger rate is a reasonable rate because it is too high, the railroads won't earn as much on a 5 cent rate as they will on a 3 cent rate. Now, whether a 3 cent rate is the right rate, or whether the time has come when a 2 cent rate would really produce more revenue to the railroad, more net revenue to the railroads than the 3 cent rate, is a question that I am not clear on. There is no way to determine that except by actual trial.

Q. Is it not a fact that traffic will move under excessive rates, move under rates until they become absolutely prohibitory?

A. Oh, some traffic of course, will move. If you charge 10 cents a mile for passenger fares, there would be some passengers that would move on that rate. Even if you charged 20 cents a mile, there would be an occasional passenger—men have to move, but the real problem is to find the rate that will give the most profit to the railroad company in the moving of it, and that is the rate which would be most advantageous to the shipper, as well as the railroad in my judgment. Now, I am not the Pope of Rome, I am not infallible.

Mr. SHAVER: I have no other questions.

The COURT: Anything else by anybody? Call the next witness.

1026 HARRY GOWER, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. With which one of the defendant companies are you connected?

A. The Chicago, Rock-Island & Pacific Railway Company.

Q. And in what capacity?

A. Assistant Freight Traffic Manager.

Q. How long have you occupied that position?

A. About between eight and nine years.

Q. How long have you been connected with the Freight Traffic Department of railroads in the United States?

A. Twenty-seven years.

Q. During what portion of that period have your duties had relation to making of freight rates?

A. Oh about eighteen or nineteen years.

Q. Please file as "Exhibit No. 1" to your testimony a statement showing correctly the rates in cents per hundred pounds now charged on cattle, hogs and packing house products and fresh meats respectively in car loads to Chicago, Illinois, from the following points, namely, Kansas City, Missouri, St. Joseph, Atchison, Kansas, Leavenworth, Council Bluffs, Iowa, Omaha, Nebraska, South
1027 Omaha, Nebraska City, Sioux City, Iowa, St. Paul, Minnesota, or South St. Paul, Ottumwa, Des Moines, Marshalltown, Cedar Rapids, Iowa, respectively. Indicate on said statement by prefixing the letter "A" to such rates as apply to shipments destined to

points east of the Indiana-Illinois State line; prefixing the letter "B" to such rates as apply to shipments originating beyond the points of shipment named, and by prefixing the letter "C" to such rates as apply when shipments originate beyond the points of shipment named, and are destined beyond the Illinois-Indiana State line.

A. I have this statement, but I have erased Marshalltown. We do not reach Marshalltown.

Q. It covers all the other points except Marshalltown?

A. Yes sir.

(The witness here produced a statement, which was marked, "Gower's Exhibit 1'" and filed with the Court as a part of his testimony.)

1027*a* EXHIBIT No. 1, TESTIMONY H. GOWER.

To Chicago from—	Cattle.	Hogs.	Packing house products.	Fresh meats.
Kansas City, Mo.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
St. Joseph, Mo.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Atchison, Kan.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Leavenworth, Kas.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Council Bluffs, Ia.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Omaha, Neb.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
South Omaha, Neb.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Nebraska City, Neb.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Sioux City, Ia.	25.0	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
St. Paul, Minn.	25.0 (*b*) 15.5 (*b*) 20.0 (*)	27.0 (*b*) 17.5	15.7 (*a*) 14.6	17.0 (*a*) 15.7
Ottumwa, Ia.	22.0	21.0	16.0	20.0 (*a*) 18.5 16.0 †
Des Moines, Ia.	22.0	23.5	18.5	20.0 (*a*) 18.5 18.5 †
Cedar Rapids, Ia.	21.0	18.5	13.5	13.5 (*a*) 13.5†

(*a*) When shipments are destined to points east of the Indiana-Illinois State Line.
(*b*) When originating beyond.
(*c*) When originating beyond and destined to points east of the Indiana-Illinois State Line.
(*) Effective Sept. 13th, 1905.
(†) Effective Aug. 20th, 1905.

Q. In the second bill, filed in this case the statement of rates from Kansas City to St. Joseph, Atchison and Leavenworth, Kansas, shows a rate to Chicago of 23½ cents on cattle and hogs, and then a rate of 20 cents with a letter "A" which, from a note shows that that rate applies only when the shipments are destined to points east of the Illinois-Indiana State line. I wish you would look at that
1028 and see if it is correct. In other words, does the 20-cent rate from those points to Chicago apply when the shipments are destined to points east of the Indiana-Illinois line, or does it apply when the shipments originate west of the Missouri River?

A. That is right.

Q. Sir?

A. The 20 cent rate on cattle and hogs from southwest Missouri River points to Chicago, applies only on cattle and hogs originating west of the Missouri River and destined to Chicago proper.

Q. Then according to the note there, the letter "A" should not have been used?

A. No.

Q. The letter "B" should have been used?

A. That is right, the same as we have it in our statement.

Mr. BAXTER: The defendants admitted the corrections to these rates as stated in the petition, and I desire to correct the answer to conform to the testimony of Mr. Gower.

The COURT: Very well.

Mr. BAXTER: It is a typographical error.

Q. I wish you would state whether the rates on cattle and hogs set forth in said exhibit "No. 1" are just or unjust, reasonable or unreasonable, and state fully the grounds of any opinion you may express.

1029 A. Well, I have testified before the Interstate Commerce Commission several times that I consider the rates on cattle and hogs throughout this Western Country were too low, and as these rates from the Missouri River are as low as any rates we have for a similar distance, and the more I hear on the subject, the more I am convinced that our live stock rates are too low. Live stock has various expenses—for instance, it is the most perishable of freight—and has a great many expenses which are peculiar to it.

Q. Are those rates affected or not affected by competition, I mean the rates between the Missouri River and Chicago?

A. Oh, they were put there originally by competition?

Q. Sir?

A. It was competition that put the rates there.

Q. Mr. Gower, I wish you would look at the second bill in this case which enumerates the defendants, and states which of those companies have lines extending from Chicago to the Missouri River and there ending, and which of them have lines west of the Missouri River as well as east of it. You can leave out of your enumeration any lines that do not enter Chicago. Take the lines entering Chi-

cago, and tell the Court which of those lines stop at the Missouri River and which of them go beyond, have lines beyond.

1030 A. The Chicago Great Western Railway Company east of the River only. The Chicago, St. Paul, Minneapolis & Omaha, we call that line an east of the Missouri River line, but they have a line, I believe, that does extend along the west bank of the Missouri River.

Q. But does that reach Chicago?

A. No; St. Paul.

Q. Well, I want you to leave out of your statement all lines that do not reach Chicago?

A. The Chicago & Alton Railroad Company, east of the River only; the Chicago & Northwestern Railway Company east of the River.

Mr. SEVERANCE: Don't they run up to the Black Hills?

A. That is the Elkhorn line, the Fremont, Elkhorn & Missouri River Railroad, part of the Northwestern system.

Mr. SEVERANCE: So is the Omaha, that is part of the Northwestern?

A. Yes sir.

Q. Go ahead.

A. The Chicago, Burlington & Quincy Railroad Company, both east and west of the Missouri River; the Chicago, Milwaukee & St. Paul Railway Company both east and west of the Missouri River.

Mr. SEVERANCE: Are you sure about that?

A. Well, the Chicago, Milwaukee & St. Paul have a line I believe that does extend north of the Missouri River in the extreme north part of the Dakotas.

1031 Mr. SEVERANCE: The terminus is on the River.

The WITNESS: The Chicago, Rock-Island & Pacific Railroad company west and east of the Missouri River. The Hanibal & St. Joe——

Mr. BAXTER:

Q. That does not reach Chicago.

A. No. The Illinois Central Railroad Company east of the Missouri River.

The COURT: Only east?

A. The Illinois Central Railroad Company only east of the Missouri River. The Missouri Pacific Railroad company—they do not reach Chicago. The Wabash Railroad Company, east of the Missouri River. That is all I think.

Mr. BAXTER:

Q. The Wisconsin Central?

A. They are east of the Missouri River, but they do not reach the Missouri River.

Q. Then if I understand you more of the defendant companies

are confined to west of the Missouri river, than there are defendants that have lines extending across that river?

A. You mean east of the Missouri River?

Q. East, yes sir.

A. Yes sir.

Q. Confined east of the Missouri River?

Mr. SEVERANCE: I wish we could have it understood about the Milwaukee & St. Paul now. Mr. Gower said that goes west of
1032 the River?

A. I thought the Milwaukee & St. Paul did, I should know, but I have forgotten.

Mr. SEVERANCE: I think Mr. Cowan will agree that it does not.

Mr. COWAN: They are now constructing a short line from Evarts across the River.

Mr. SEVERANCE: It does not run across the river now, except to get into the Omaha stock yards.

The WITNESS: It is what we call an east of the Missouri River line. I thought they had a few miles west of the Missouri River.

Mr. COWAN: That is correct, but it is only a short line.

Mr. BAXTER: Will you please file as "Exhibit No. 2" to your testimony a statement for the year ending June 30, 1905, showing a total freight earnings of your company, the earnings of your company from cattle, the earnings from your company from hogs, the earnings from your company from packing house products, and the earnings of your company from fresh meat.

A. Yes sir.

(The witness here produced a statement, which is marked "Gower's Exhibit No. 2" and filed with the Court as a part of his testimony.)

1032*a* EXHIBIT #2, TESTIMONY H. GOWER.

a. Total Freight earnings of the Rock Island System for the year ending June 30th, 1905, was...	$29,662,386.08
b. The earnings of the Rock Island System for the year ending June 30th, 1905, from cattle, was...	1,829,400.52
c. The earnings of the Rock Island System for the year ending June 30th, 1905 from hogs, was....	916,014.52
d. The earnings of the Rock Island System for the year ending June 30th, 1905, from P. H. P., was.	413,713.28
e. The earnings of the Rock Island System for the year ending June 30th, 1905 from fresh meat, was	469,391.07

1033 Q. Mr. Gower, how does the amount paid by your company for loss and damage to cattle and hogs and for injuries to persons in charge of cattle and hogs, compare with the amount

paid by your company for similar claims in regard to perishable commodities?

A. I could not give any information in regard to the personaly injuries for the last year. I think I testified in St. Louis in regard to the 1903 claims, I have that information.

Mr. COWAN: I don't quite hear you.

A. I think I testified in St. Louis in regard to 1903. I have that information taken from the record, if you want it, but for 1905, our Auditor tells me that the loss and damage claims paid on live stock as compared with the loss and damage claims paid on all other perishable freight are about 640 per cent.

Mr. BAXTER:

Q. Are the through rates on cattle and hogs from the points of shipment mentioned in your "Exhibit No. 1" to the points of final destination greater or less than the sum of the local rates where the through line is made up of two or more railroads?

A. There is only one case in that exhibit where the through rate is made up on more than one railroad, that is Nebraska City. That is the only rate in that schedule where the rate is made up of
1034 two lines. That of course, is less than the sum of the locals.

Q. What is the established minimum car load weight for cattle and hogs respectively on your road and how does the actual loading on your road of cattle and hogs compare with that minimum?

A. Our minimum on cattle in standard cars, namely 33 feet 9 inches, up to 36 feet 6 inches, is 22,000 pounds. On the hogs for same dimensions, 17,000 pounds. The average loading on our road on our cattle is, 22,423 pounds and on hogs, 16,658 pounds.

Q. How do the rates on cattle and hogs set forth in your "Exhibit No. 1" compare with the rates charged by other railroads in the same and other parts of the United States for the transportation of cattle and hogs from other points of shipment to other points of destination, the distance and other circumstances and conditions being relatively considered?

A. Well, I can give you some comparison showing our rates, for the average distance between Missouri River and Chicago as compared with similar distances in other parts of the country, but I am not in a position to say as to whether the conditions on other roads in other parts of the country are the same.

1035 The COURT: Have you a schedule, a list there, or statement?

A. I have just some memoranda I have made.

Mr. BAXTER:

Q. Well have you got those comparisons compiled there Mr. Gower?

A. Well, take our road from Resolis, Colorado to Omaha, 500 miles, being the same average distance as from the Missouri River to

Chicago, our rate on cattle is 31 cents, and on hogs, 40 cents. Take it from Seibert, Colorado, to Kansas City, on cattle, it is 27½ cents and on hogs, 35½. Texhoma, 493 miles, the rate on cattle is 34½, and on hogs, 42½ cents. From Terral, 496 miles, the rate on cattle is 36½ cents, and on hogs, 45 cents.

Q. How much did you say cattle were?

A. 36½ cents, and hogs 45 cents.

Q. Mr. Gower, we will not take up the time of the Court to read those unless his Honor wants to hear it.

The COURT: File that.

Mr. SEVERANCE: I understood him to say he had no schedule, simply some memoranda.

The COURT: If it is in shape so he can file it, let him file it.

(No statement was filed by the witness at the time he was on the stand.)

1036 Mr. BAXTER:

Q. In proportion to the service performed, is the net revenue received by railroads for the transportation of cattle and hogs, more or less than the net revenue received by them for the transportation of ordinary dead freight?

A. The net revenue ordinarily is less on live stock than dead freight on account of the smaller proportion of pay freight to the gross load.

Q. How does the revenue derived by your company from a car loaded for instance, with coal, lumber or other low grade traffic compare with the revenue derived by your company from the transportation of cattle and hogs in a car of the same capacity between the same points, or for similar distances? If you have any instances of making that comparison, state the general nature of them.

A. Well, take class A freight, which covers machinery of all kinds, certain classes of iron and furniture, $96 a car we earn from Chicago to the Missouri River. The gross loading would be 60,000 pounds on Class A, or about $3.20 per ton for the tonnage haul.

I always figure that by taking the weight of the car and the weight of the load and comparing with live stock. The box cars will average practically the same on our road as our live stock
1037 cars, about 15 tons. Say you take 30,000 pounds to the car and 30,000 pounds to the load, and we earn $3.20 per ton hauled. Fifth class freight includes all the heavy articles of merchandise, most of the iron articles, canned goods and such things of that kind. The average load of that would be about 40,000 pounds; our rate between Chicago and the Missouri River is 27 cents. That gives $108, for which we would haul 70,000 pounds, which would earn us, $3.09 per net ton.

Hard coal, which is a very low rated article pays $2.50 per ton between Chicago and the Missouri River. We get that from Eastern lines in open cars, a good deal of it in large cars, very rarely less than 60,000 pounds, and it pays us $75 per car. I have figured those

cars from the weight of our cars, 28,000 pounds, which is a very liberal estimate, and that pays us $1.70 per ton.

East bound business, butter and eggs, that is a perishable commodity. Our average load of butter and eggs is 22,000 pounds. The rate is 45 cents, which pays up $99 a car. That is one of the articles that it seems quite fair to compare with perishable freight like live stock. That pays us $3.90 per ton hauled.

Coming to grain: I have figured the grain at 16 cents, that is wheat, 16 cents from Kansas City, because the rates in con-
1038 troversy, I understand, are the rates from intermediate points, and in the zone where the Missouri River rates apply. We would apply the local rate of 16 cents on wheat and 15 cents on corn. That at 16 cents on wheat would be $90 per car.

Mr. COWAN: I am under the disability of not being able to hear hardly anything you say.

A. I am sorry. I was saying I figured our grain as a comparison at the intermediate points, because I understand the intermediate point rates on live stock are the rates in controversy; so I have taken the wheat rate of 16 cents per hundred pounds. Our average load of wheat is 60,000 pounds because wheat is usually bought in one thousand bushels. That gives us $96 per car. The empty car weighs 30,000 pounds, or a total of 126,000 pounds, and we earn $2.13 per ton hauled.

The COURT: How much is it a ton on live stock?

A. I have not mentioned live stock yet, I was just coming to it. Now, on cattle I have two computations, on cattle, I figured our cattle at 23,000 pounds, slightly over the average loading. The weight of our cattle cars, including bedding, averages about 31,500 pounds. Now on cattle we have to haul our cars empty to the loading point almost universally on our road, and we have no loading west-
bound. I have figured that 75 per cent. of our cattle cars
1039 at least are hauled empty to the point of loading, so we haul 75 per cent. of the original weight of the car, that gives another 23,625 pounds or a total of 78,125 pounds on which we get pay for 23,000 pounds only. That gives us $54.05 for which we haul 39 tons, or $1.38 per ton. I am figuring on 23½ cents. Figuring on 20 cents, we would get $1.18 on the same basis. Hogs, on the same method of computation give at 23½ cents, $1.11 per ton and at 20 cents, $.94 per ton, less than one dollar per ton.

A recess was here taken until two o'clock of the same day, Tuesday, September 26, 1905.

1040 SEPTEMBER 26, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon HARRY GOWER, resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. I wish you would file as Exhibit No. 3 a statement showing the rates charged by your company on cattle and hogs respectively to Chicago, Illinois, from each intermediate point on its line between St. Paul and Missouri river points on the one hand, and Chicago on the other, in other words, your intermediate rates.

(The statement was produced by the witness, marked Gower Exhibit No. 3 and is attached hereto.)

CHARTS

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LARGE

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Q. I wish you would also file a statement as Exhibit 4 to your testimony showing for the last three years ending June 30th, 1905, the volume of shipments of packing house products and fresh meats from St. Paul and Missouri river points to the north, east, west and south, respectively?

A. I believe I filed three exhibits.

Q. What I want is the volume of shipments of packing house products and fresh meat from St. Paul and Missouri River
1041 points, to the north, east, west and south?

A. I have that.

Q. Does it divide them up into shipments to the north, east, south and west, so as to show how they are divided?

A. This statement shows the movement of packing house product from the Missouri river points and from South St. Paul to the east, west, north and south.

Q. Are they in the aggregate or shown separately?

A. They are shown separately.

(Statement produced by the witness, marked "Gower Exhibit 4" and is attached hereto.)

1041*a*

EXHIBIT 4, TESTIMONY H. GOWER.

The Chicago, Rock Island and Pacific Railway Company.

Office Auditor Freight Traffic.

CHICAGO, *Sept.* 14, 1905.

Statement Showing Number of Cars of Fresh Meats and Packing House Products Forwarded from St. Paul and Missouri River Points Located on C., R. I. & P. Ry. for the Three Years Ending June 30, 1905.

1902/03.

	Fresh meats.					Packing house products.				
	East.	West.	North.	South.	Total.	East.	West.	North.	South.	Total.
So. St. Paul	5	....	....	....	5	14	3	5	....	22
Kansas City	733	251	1	...	985	571	596	12	....	1169
St. Joseph	1594	63	29	5	1691	541	388	27	22	978
So. Omaha	2039	345	...	....	2384	583	529	....	2	1114
Council Bluffs	....	1	....	....	1	....	18	....	....	18
Omaha										
Atchison										
Leavenworth										

1903/04.

	Fresh meats.					Packing house products.				
	East.	West.	North.	South.	Total.	East.	West.	North.	South.	Total.
So. St. Paul	....	....	....	....	....	38	1	....	....	39
Kansas City	267	174	14	....	455	866	762	1	....	1629
St. Joseph	292	....	11	....	303	444	402	1	....	847
So. Omaha	2237	147	3	....	2387	377	313	5	1	696
Council Bluffs	....	....	....	...	....	....	1	....	....	1
Omaha										
Atchison										
Leavenworth										

1904/05.

	Fresh meats.					Packing house products.				
	East.	West.	North.	South.	Total.	East.	West.	North.	South.	Total.
So. St. Paul		1			1	10	13			25
Kansas City	61	125	1	1	188	503	778	12		1293
St. Joseph	221	40			261	220	273			493
So. Omaha	4561	196			4757	297	442			739
Council Bluffs	1				1	3	6			9
Omaha						4				4
Atchison										
Leavenworth										

Q. Is the distance of the Misouri river and St. Paul market of benefit or injury to the persons who produce cattle?

A. I should consider that the nearer the market to the product, whether it is live stock or grain, to be an advantage.

Q. State what effect, if any, the reduction of rates on cattle and hogs at intermediate points east of the Missouri river would have upon the rates on cattle and hogs west of that river?

Mr. COWAN: I think that is merely speculative and I will object to it.

The COURT: I will let him answer.

A. It would reduce the rate—Do I understand that question that the reduction of rates is east of the Missouri river and not at the river?

1042 Mr. BAXTER:

Q. If you reduce the live stock rates in the territory east of the Missouri river, will it have any effect upon the rates west of the Missouri river in your opinion?

A. All our rates are subject to comparison. The trouble we are always having is justifying certain rates in comparison with other rates. All reductions are liable to have the effect that by comparison with other rates it reduces those rates.

Q. State whether the reduction of rates for cattle and hogs at intermediate points east of the Missouri river would have any effect upon the revenue of your company and if so, what would it amount to?

A. Well, we have figured in taking our present rates that are higher than the 20 cents, east of the Missouri river, reducing them to 20 cents would cost us $82,000 per annum.

Q. How much?

A. $82,000.00, and we could not stop there. We would have to go beyond the reduction in grading, we would reduce a good many rates besides those now higher than 20 cents.

Q. You mean your rates on live stock?

A. On live stock, that is what I am talking about.

Q. State what terminal or switching charges are paid by your

company on packing house products and fresh meats at St.
1043 Paul and the Missouri river points?

A. At South St. Paul we pay 75 cents per car. At Kansas City, $3.00 per car. At St. Joe, $1.50, at South Omaha, $2.00.

Q. File a statement as Exhibit No. 5 to your testimony showing the number of cars of packing house product and fresh meats received by your company during the year ending June 30th, 1905, from St. Paul and each of the Missouri river points.

A. It is in the other statement, but I have it separately if you desire.

(Statement produced by the witness, marked "Gower's Exhibit 5", and is attached hereto.)

1042*a* EXHIBIT 5, TESTIMONY H. GOWER.

Statement Showing Number of Cars of Packing House Products and Fresh Meat Received by C., R. I. & P. Ry. During the Year Ending June 30th, 1905, from South St. Paul and Each of the Missouri River Points.

	P. H. P. No. of cars.	F. M. No. of cars.
St. Paul	None	None
South St. Paul	25	1
Kansas City	1293	188
St. Joseph	493	261
South Omaha	739	4757
Council Bluffs	9	1
Omaha	4	None
Leavenworth	None	None
Atchison	None	None

Mr. SEVERANCE: I thought that was in the other.

Mr. BAXTER:

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Kansas City respectively from certain stations on the Chicago Rock Island & Pacific Railway east and west of Kansas City, and showing the straight rates from said stations to Chicago Illinois, on cattle and hogs and the combination of the live stock rates from said stations to Kansas City plus the packing house product and dressed meat rate of 20 cents per hundred to Chicago? If so, please file said statement as Exhibit No. 6 to your testimony and state briefly what it shows.

A. I have a statement here showing the distance from points west and east of the Missouri river to Kansas City, ranging from
1044 54 miles to 301 miles, the rates into Kansas City and the rates added to the packing house product rate of 20 cents from Kansas City to Chicago. Then the rate from the same stations to Chicago showing that the combination is in favor of Chicago.

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(The said statement is produced by the witness, marked "Gower Exhibit No. 6" and is attached hereto.)

1042b

From	Distance to		Straight rate to Chicago.		Rate to K. City.		Comb. of the live stock rates from said stations to K. C. plus P. H. P. rate of 20 cents to Chicago.	
	Ch'go.	Kas. City.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle	Hogs.
West.								
Topeka	585	68	27	28½	8½	11	28½	31
Valencia	596	79	27	29½	8½	11	28½	31
McFarland	616	99	29	32	11	14	31	34
Herington	665	148	31½	34	13	17	33	37
Groveland	718	201	34	37½	16½	21½	36.5	41.5
Brenham	818	301	38	43½	19½	25	39.5	45
East.								
Cameron	463	54	23.5	23.5	8.5	9.5	28.5	29.5
Gallatin	442	75	23.5	23.5	10	12	30	32
Trenton	416	101	22	23.5	10.5	12.5	30.5	32.5

Gower Exhibit No. 6, vol. 9, p. 1043.

A. Have you caused to be correctly compiled a statement of the distances to Chicago, and St. Joseph, Missouri, respectively from certain stations on the Chicago, Rock Island & Pacific Railway, east and west of St. Joseph with straight rates to Chicago on cattle and hogs and the combination of the live stock rates from said stations to St. Joseph plus the packing house product and dressed beef rate of 20 cents per hundred pounds to Chicago? If so, please file said statement stating briefly what it shows.

A. I have a statement showing the distances from certain stations west of St. Joseph and east of St. Joseph, ranging from 24 miles to 228 miles. The rate into St. Joe, also the rate from St. Joe, and also the rate on packing house products, St. Joe to Chicago and the rates from the stations named to Chicago, showing that the combination on St. Joe is in favor of Chicago.

(The statement produced by the witness is marked "Gower Exhibit No. 7" and is attached hereto.)

1044a

From	Distance to		Straight rate to Chicago.		Rate to St. Joe.		Comb. of the live stock rates from said stations to St. Joe, plus P. H. P. rate of 20c. from St. Joe to Chicago.	
	Chicago.	St. Joe.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Denton	522	24	24½	25½	5½	7	25½	27
Powhatton	549	51	25½	27	7	9	27	29
Bern	574	76	27½	30	9½	12	29½	32
Steinauer, Neb.	598	100	28½	32½	11½	15	31½	35
Jansen, "	648	150	33½	37½	13½	17½	33½	37½
Scandia, Kas.	697	199	34½	38½	14½	18½	34½	38½
Prairie View, Kan.	736	238	35½	40	15½	20	35½	40
Amity	471	27	23½	23½	6	7	26	27
Altamont	449	49	23½	23½	7½	8½	27½	28½
Hickory Creek	424	74	23	23½	10½	12	30½	32
Princeton	393	105	22	23½	11½	13½	31½	33½

Gower Ex. 7. Vol. 9, p. 1044.

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Des Moines, Iowa, respectively
1045 from certain stations on the Chicago, Rock Island & Pacific Railway east and west of Des Moines, the straight rates from said stations to Chicago, Illinois, on cattle and hogs, and the combination of the live stock rates from said stations to Des Moines plus the packing house and dressed beef rate of 18½ cents per hundred pounds from Des Moines to Chicago? If so, please file said statement and state briefly what it shows?

A. I have a statement here showing the distance to Des Moines from stations east and west ranging from 23 to 101 miles showing the rates into Des Moines and the rates to Des Moines plus the local rate on packing house products Des Moines to Chicago and the rates from those stations to Chicago, showing the combination is in favor of Chicago.

(The statement produced by the witness is marked "Gower Exhibit No. 8" and is attached hereto.)

1046a

From	Distance to		Straight rate to Chicago.		Rate to Des Moines.		Combination of the live stock rates from said stations to Des Moines, plus P. H. P. rate of 18½ beyond.	
	Chicago.	Des Moines.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
West.								
Earlham	387	29	22.5	23.5	7.11	7.33	25.61	25.83
Casey	410	52	23.5	23.5	8.95	9	27.45	27.5
Wiota	433	75	23.5	23.5	10	10.16	28.5	28.66
Avoca	459	101	23.5	23.5	11.53	11.12	30.03	29.62
East.								
Colfax	335	23	22	23	6.71	7	25.21	25.5
Turner	309	49	22	21	8.68	8.67	27.18	27.17
Victor	280	78	22	21	10.26	10.32	28.76	28.82
Homestead	257	101	21.5	20	11.53	11.12	30.03	29.62

Gower, Exhibit No. 8, vol. 9, p. 1046.

Q. Have you caused to be correctly compiled a statement showing the distance from Chicago and Cedar Rapids, Iowa, respectively from certain stations on your road north and south of Cedar Rapids, the straight rates from said stations to Chicago, Illinois on cattle and hogs and the combination of the live stock rates from said station to Cedar Rapids, Iowa, plus the packing house product and dressed beef rate of 16½ cents to Chicago? If so, please file said state-
1046 ment as an exhibit to your testimony and state what it shows?

A. I have a statement here showing the distances into Cedar Rapids from stations 23 to 98 miles from Cedar Rapids east and west; the rates into Cedar Rapids plus the packing house rate from Cedar Rapids to Chicago and the straight rate of cattle and hogs from those stations to Chicago, showing the combination in favor of Chicago.

(The statement produced by the witness is marked "Gower Exhibit No. 9," and is attached hereto.)

10466 From stations west of Cedar Rapids.	Distance to		Straight rate to Chicago.		Rate to Cedar Rapids.		Combination of the live stock rates from said stations to Cedar Rapids, plus P. H. P. rate of 13½ from Cedar Rapids.	
	Ch'go.	Ced. R.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Vinton	280	23	21	20	6.71	7	20.21	20.5
Waterloo	310	53	22	20	8.95	9	22.45	22.5
Waverly	332	75	22.5	22	10	10.16	23.5	23.66
Marble Rock	355	98	22.5	23	11.32	10.96	24.82	24.46
Oasis	232	25	20	18.5	6.71	7	20.21	20.5
Sunbury	286	54	17	16	8.95	9	22.45	22.5
Rock Island	181	76	11.1	15	10.26	10.32	23.76	23.82
Genesco	159	98	11	10	11.32	10.92	24.82	24.46

Gower Exhibit No. 9, vol. 9, p. 1046.

Q. State whether there are any other stations on your road than those mentioned in your exhibits which I have just called for, with reference to which the rate adjustment is in favor of Chicago against the packing house points which are covered in your exhibits?

A. Ottumwa would show the same figures.

Q. Your exhibits show a number of stations scattered along your line for a distance of say, from 25 to 100 miles. They are not all the stations on that part of your line, are they?

A. No.

Q. Would the same rule apply to intermediate stations *stations* between those stations?

A. The same distance, because the Iowa tariff is the same all through the state.

Q. Are any packing house products shipped from any point on your line between the Missouri river or St. Paul and Chicago unless there be a packing house at such intermediate points?

1047 A. There is one article that may be shipped from any station in Iowa and that is hides, green hides which are included in the packing house list. Outside of that there would be no meats shipped in car loads from stations where there are no packing houses.

Q. Do any of the different companies join in making through rates from points west of the Mississippi river to New York or other eastern points and by eastern points, I mean points east of the Indiana and Illinois state line or are the rates made on the combination?

A. The rates are made on the combination on the Mississippi river unless the combination happens to be lower on Chicago, which is rarely the case.

Q. If the combination be lower at Chicago, then Chicago would control?

A. Yes, if the combination on Chicago was lower, than the combination on the river would prevail.

Q. Explain to the court the difference between the local rate charged from any point on your line to the Mississippi river and the proportional rate which your road exacts from th- same point to the Mississippi river when the packing house products are destined for points east of the Indiana and Illinois state line. Why is that proportional rate put in there?

A. You mean from Iowa?

Q. Yes.

1048 A. The local rate from Iowa stations to the Mississippi river is the state tariff. It is absolute. We don't vary from it. In order to equalize the gateways which are not equal distances, we have to make a rate to the Mississippi river which, added to the Mississippi river rate is uniform, from Topeka to East St. Louis or some other of the river crossings,—so as to equalize all of the gate-ways we have to make a proportional rate to all of the river points. The proportional rate is really an equalizer to make the through rates the same for all river gate-ways.

Q. Are the rates charged by the lines east of the Mississippi river on packing house products originating in Iowa, are they the regular local rates from the Mississippi river to the eastern points or are they less?

A. They are the east St. Louis rates. The basis of all through rates in East St. Louis. The East St. Louis basis is applied from all the Mississippi river stations on business going east of the Indiana and Illinois state line with a few exceptions in short points. That is the basis and we have to make our rates, of course, up to the river the same to every river point regardless of the distance. That is the short line distance from Ottumwa to Burlington would be about 100 miles or less than that, probably 75 miles but any other road taking the business from Ottumwa might carry it 150 miles to their

1049 river point and yet have to make the same proportion as the C. B. & Q. make on their short lines. It is on the equalizing basis. The local rate from the Mississippi river to the seaboard is much higher.

Q. Sir?

A. The local rates from the Mississippi river to the seaboard is much higher that the proportional rate.

Q. You cannot exact on packing house products originating in Iowa, any higher rate than your rate to the Mississippi river plus whatever the rate may happen to be that is charged by the roads east of the Mississippi river?

A. No, that is the maximum.

Q. Can you state how the rates on packing house products from Chicago to Pacific coast points compare with the rate- *rates* on pack-

ing house products from Missouri river points to the Pacific coast points, are they higher or lower or the same?

A. From Chicago?

Q. Yes?

A. They are certainly not lower. I don't recall the figures exactly, but my judgment would be that there is not more than 5 cents between them.

Q. How do the rates on packing house products from Chicago to Texas points *points* compare with the rates on packing house products from the Missouri river to Texas points?

A. Higher from Chicago.

Q. How do the rates from Chicago to New York and eastern points compare with the rate on packing house products from the Missouri river points to New York and other eastern points?

1050 A. They are lower from Chicago.

Q. Will you be kind enough to get the figures between now and to-morrow morning and be prepared to answer those questions?

A. Yes sir.

Cross-examination by Mr. COWAN:

Q. Do you speak for the Rock Island road in your testimony here?

A. Yes sir.

Q. How is that?

A. As far as the Traffic Department is conce-ned.

Q. Well, do you stand here as a representative of the Chicago Rock Island & Pacific System in the expressions that you have given here?

A. Only the Traffic Department.

Q. You will have to speak louder?

A. Only the traffic department.

Q. Do you not know that it is a fact that Mr. Boyd of your traffic department testified in this case before the Interstate Commerce Commission?

A. Well, I remember that he testified. I thought you were going to tell me what he testified to.

Q. What position did he hold?

Mr. SEVERANCE: I object to that as immaterial. Of course, that is only preliminary to endeavoring to show, otherwise it can-

1051 not be competent, it must be preliminary to endeavoring to show that Mr. Boyd has given expression to different views than are now given here on the witness stand by Mr. Gower. I don't think this witness can be contradicted or impeached in that way.

The COURT: You can prove what the other man said and get it into the record.

Mr. SEVERANCE: He can unless we are able to convince your Honor, that it is incompetent. He cannot prove it to impeach this gentleman. Mr. Gower is not the Rock Island Road and neither is Mr. Boyd. This is a witness testifying under oath as to his opinions.

The COURT: He has a right to cross-examine him.

Mr. COWAN: My object is this, and I will state it here. In the hearing before the Interstate Commerce Commission, through a traffic official of the Rock Island Road, a statement is made before the Commission with respect to these very matters, pertaining to the rates and cost and what the relative rates ought to be on this kind of traffic. The statements are made by the Burlington and other roads with respect to that matter. The commission hears the testimony and they go out and decide the case. Then when it comes before the court, they bring in some other official or some other man before the court who expresses a different opinion and I think it is competent for the court to ascertain who speaks for this company. If it
1052 was an individual they could be impeached. They would not dare testify to the contrary of what they did in the former hearing, yet, when they come in with a different individual——

Mr. SEVERANCE: Nothing in the world could be more clearly incompetent. There is no corporation in here testifying. It is a witness here testifying under oath. The mere fact that he is connected with the Rock Island Road or some other road don't make any difference. It don't make any difference what Mr. Boyd has testified to in the other proceeding, unless your Honor should hold that Mr. Boyd's testimony in a proceeding where the same issue was involved would be properly receivable. That was the question that we discussed with your Honor at the beginning of the trial.

The COURT: And I held that that was competent evidence.

Mr. SEVERANCE: Your Honor so held, yes sir.

The COURT: Well, let me have the question now, let's see what the question is.

(The pending question was then read.)

The COURT: Objection overruled.

A. He is general Freight Agent of the Company. He is not with us at present.

Mr. COWAN:

Q. Is it not a fact that at the time it was the belief on the part of the Rock Island Railroad that the rates on dressed meats and packing house products ought to be higher or as high at least as
1053 the rates on the live stock from the Missouri river points and intermediate, to Chicago?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant and immaterial.

The COURT: Objection sustained.

Mr. COWAN:

Q. What was your opinion at that time?

A. I don't remember what my opinion was at that time.

Q. What is your opinion now?

A. I have not seen so far any close relationship between the rates on dressed beef and cattle.

Q. That does not answer my question.

A. I have not seen any very close relationship between cattle and dressed beef.

Q. Why then do you add the rates on cattle to Ottumwa or some other local station, Cedar Rapids, for example, to the rates on packing house products and dressed meats, when you testify that there is no preference given in favor of Chicago?

A. I added them to the packing house products.

Q. Didn't you add the live stock rate in a number of the computations you filed here, to the rates on packing house products and dressed meats?

A. The rates on packing house products.

Q. I cannot hear you?

A. Packing house products.

Q. Added on the product and not the dressed meat?

1054 A. Yes sir.

Q. Isn't it a very much closer relation betwe-n the dressed meat and the live stock than there is between packing house products and live stock?

A. Well, I don't know about that. We hear so many very strange movements of both live stock and packing house produ-ts and occasionally dressed meats, that it would seem that the rate was not as close to it as I think we have generally assumed.

Q. Well, that does not answer my question. Is it or not your opinion that the rates on dressed meats ought to be as high as on the live animal?

A. No, I have not arrived at that opinion yet.

Q. What?

A. I have not arrived at that opinion yet.

Q. Have you an opinion to the contrary?

A. In most cases, yes.

Q. Why don't you make your dressed meat from Fort Worth to Kansas City as low as you do your live stock rate then?

A. We don't have the rate making power. We don't have the power of making the rate anything we want to. We cannot make the rate anything we want to. We have other roads running there and if we reduce the dressed beef rate, to the live stock rate, we will probably run against some road with a different opinion, and they might reduce the live stock rate.

Q. How would their opinion keep you from reducing your

1055 dressed beef rate from Fort Worth to Chicago?

A. If they did not agree with us they could simply reduce the live stock rate.

Q. How is that?

A. If they did not agree with us they could reduce the live stock rate.

Q. Do you mean to say that you agree on these rates?

A. I do not say so. I say if they did not agree with our opinion, if their opinion was different, they might reduce the live stock rate.

Q. Why don't other roads make the packing house products and dressed meat rates as low from Fort Worth, if they ought to be as low?

A. I don't know.

Mr. SEVERANCE: That is objected to.

Mr. COWAN:

Q. Now your rate on dressed meat from Denver to Omaha is higher than it is on your live stock, isn't it?

A. I have not the figures here.

Q. Well, don't you recollect? You are Assistant Traffic Manager, you recollect, don't you?

A. No, I don't recollect the figures.

Q. Have you the tariffs here with you?

A. I don't think I have. I have the rate on cattle here.

Q. What have you that rate from Missouri to Omaha?

A. 49 cents.

Q. How is that?

A. Oh, no, that is Chicago.

Q. The dressed meat rate from Denver to Omaha.

1056 A. 33 cents on the cattle to Omaha.

Q. What is it on dressed meat from Denver?

A. I don't remember that figure, Mr. Cowan.

Q. Well, it is higher than on the live stock, isn't it?

A. Oh, yes, I think it is.

Q. What is your dressed meat rate from Ottumwa to Missouri river points? Higher than the live stock, isn't it?

A. Yes sir.

Q. What is your dressed meat rate from killing points elsewhere on your line as compared to the live stock to any point except the Missouri river rates and the interior Iowa packing house rates to Chicago, with that exception?

A. Well, our rate from Des Moines to Chicago on dressed beef is 18 cents and a half and cattle 22.

Q. I say with the exception of the rates from interior packing towns in Iowa and with the exception of Missouri river to Chicago, what are the relative rates on the two? To put it in another form, isn't it a fact that all of your dressed meat rates and your packing house product rates are higher than they are on the live animals with the exceptions I have mentioned?

A. Well, I can only tell by taking the killing points because at other points where there are no packing houses, we practically have no rates except class rates.

Q. Well, it don't matter what sort of rates they have got, whether they are class or not. What they have to pay is more to ship

1057 the dressed carcasses than the live animal in all the instances except those I have mentioned.

The COURT: Answer that yes or no if you can.

A. I don't know without seeing.

Mr. COWAN:

Q. The Iowa distance tariff is higher on the packing house product and dressed meat, isn't it?

A. We did not make it, though.

Q. Well, that don't answer my question.

Mr. SEVERANCE: I don't see why we need spend any time on

that. We can introduce the Iowa tariffs if it is necessary. That will show for itself.

The COURT: Well, yes, that is true.

Mr. COWAN:

Q. Take the rates on dressed meats and packing house products from Missouri river points and from Chicago to Texas common points, Fort Worth, for example. Isn't it a fact that the dressed meat and packing house product rates are higher than the live stock rates?

A. I think that is true.

Q. And the same from St. Louis?

A. Yes, that would be true from St. Louis, also.

Q. In shipments from Fort Worth to New Orleans and Memphis and Little Rock and other points supplied from Fort Worth, isn't it a fact that the dressed meats and packing house products rates are higher than the rates on the live animal?

1058 A. Yes sir.

Q. Now, which of the rates are expressive of the judgment of your railroad, those from places where the live stock is higher or those from places where it is the lower.

Mr. SEVERANCE: That is objected to as incompetent.

The COURT: Let him answer.

A. Why, I don't know that any rates are expressive of our judgment on the question as to what they should be.

Mr. COWAN:

Q. Were these rates from the Missouri river on the product of live stock made lower as a matter of judgment or not?

A. The rates from the Missouri river were made to meet the competition of another road that established the rate.

Q. Is it not a fact that your road had been carrying the live stock at less than the published rate, before the Great Western contract was made and before the lower rates were published?

A. I don't remember.

The COURT:

Q. How long have you been in your present position? How does it happen that you do not know?

A. Eight or nine years. I don't remember what we were carrying the live stock at in 1901.

Q. Is there any doubt about that, that the live stock was lower before?

A. No, I think the rate was exactly the same then as it

1059 is now.

Q. What was the local rate of the Iowa distance tariff from Cedar Rapids and Ottumwa to the Mississippi river, do you recollect?

A. I do not recollect.

Q. I understood you to say that the proportional rate to the Mississippi river was based on the Iowa distance tariff, on dressed meats?

A. I did not say so.

Q. You were speaking so low that I did not understand you. The proportional rate is very much less, isn't it?

A. Yes, I should judge it is on packing house products.

Q. Do you claim that the packing house rates on packing house products and dressed meats from any point should be higher or lower dependent upon what was paid on the live stock rate into that killing point?

A. No, I have not made any such claim.

Q. No such basis has ever been adopted, has it?

A. Not in establishing rates, no.

Q. Isn't it a fact that there are shipments into Kansas City to the packing houses or rather to the market on which 10 cents a hundred is paid, 20 cents a hundred, 40 cents a hundred, 50 cents a hundred?

A. On live stock?

Q. Yes.

A. Yes sir, live stock moves into Kansas City and Omaha from points in the west where the rates would be as high as you say.

Q. The rates vary very much?

A. Yes sir.

1060 Q. The price paid for live stock in the market is not dependent at all on what the rate of freight is or was on the live stock into the market?

A. I don't know about that.

Q. Well, suppose a man ships in a 1200 pound steer from El Paso over your line and another comes in from Herrington to Kansas City. Would there be a higher price paid on the steer from El Paso than from Herrington, because of the rate there?

A. I presume not, I don't know about the market.

Q. You did not and do not base packing house rates at all upon that fact, do you?

A. Well, we have considered that from interior points.

Q. How is that?

A. We have considered them sometimes from interior points. We have considered them in the making of rates occasionally.

Q. Who did?

A. I say we have.

Q. Whom do you mean by "we"?

A. I mean the roads.

Q. Have considered the rate of freight paid into the point?

A. We have considered that.

Q. Where and when was that considered?

A. Well, I could not give you the exact day or the week or the month.

Q. I mean as applied to what places?

A. I think we considered them a short time ago in regard to Cedar Rapids.

1061 Q. Now, did you adopt the schedule based on what they had to pay on live stock into Cedar Rapids?

A. Not on the price, on the rate. On the rate, not on the price.

Q. Did you base the rate on the packing house product out, on the rate which they paid on the live stock in?

A. It was one of the elements we took into consideration in reducing the rate from Cedar Rapids to Chicago.

Q. Why did you do that?

A. We did that on the representation of the shipper, that the rates were based against him.

Q. What shippers?

A. The shippers at Cedar Rapids.

Q. Did some shippers of hogs to Cedar Rapids make such representation to you?

A. That the rates into Cedar Rapids and the local from Cedar Rapids to Chicago were not fairly adjusted as against the rates on cattle from the Iowa points to Chicago.

Q. Who made that representation except the packing house at Cedar Rapids?

A. That is right.

Q. Did any party else except the packing house or somebody interested in it make that representation?

A. No, I don't recall anybody else.

Q. You answered a moment ago that — based on the price, that that was based on the price that the Cedar Rapids man paid?

A. The rate, not the price. I mean the rate on the live
1062 stock in and the packing house products out.

Q. Did you base your product rate out on the price he pays on live stock?

A. No.

Q. Did you base it on the price that he pays for the freight in?

A. On the rate he pays in?

Q. Yes?

A. Yes sir.

Q. How did you make the figures, what was the method of computation?

A. Very similar to what I have filed here in the exhibits. I think it is Exhibit C.

Q. That is you made him a rate on the product out, which would be equal to the Chicago rate from the point of origin on the live stock——

A. No, it was not equal. The figures show different. There is a difference of about 3½ cents, I think, and in some cases it was greater.

Q. You reduced that on the assumption that he paid the freight?

A. He certainly paid the freight on the packing house product out of Cedar Rapids.

Q. Did you make it on the assumption that he paid the freight on the live hogs into Cedar Rapids?

A. We did not care about that. The rates themselves showed.

Q. Did you know then that he bought the live hogs at the price

minus the rate of freight to Chicago and expenses at the terminal yards there?

A. No.

1063 Q. If you had known that would that have made a difference in your rate?

A. No, I don't think that is anything we woud take into consideration, if he was competing against a Chicago buyer.

Q. You said these live stock rates you considered too low. Too low for what?

A. Too low for the service performed and the extraordinary expenses contingent upon handling the live stock business.

1064 Q. You stated today that the rate from Terral, Indian Territory to Kansas City was 36½ cents on cattle and about 42 or 43 cents on hogs. You testified in the Texas rate case before the Interstate Commission that all those southwestern rates were too low, didn't you?

A. No, I don't think I testified, Mr. Cowan, specifically as to any rates. I think my statement was that our live stock business was handled at too low a rate.

Q. You testified that all the live stock rates on your road were too low, didn't you?

A. I testified that the live stock business did not yield the revenue it ought to as compared with other commodities moved under similar conditions.

Q. What was the distance from Terral to Kansas City, little less than 500 miles?

A. 427, I think it is.

Q. About the same distance it is from Kansas City to Chicago?

A. Yes, sir.

Q. Isn't it a fact that on a shipment from Terral that is routed to Chicago, you carry it for 16¼ cents more if the shipper brings it on to Chicago from Kansas City than if he stops it at Kansas City?

A. It is possibly so.

Q. Don't you know whether it is or not?

A. By figuring the two rates I can tell, but I will admit that it is less than 20 cents, the difference.

1065 Q. Don't you know that from Texas common points the differential of 16¼ to Chicago is above Kansas City?

A. With some exceptions.

Q. And Terral is within that district?

A. 16¼ cents generally but not always.

Q. What service do you perform for the service of cattle from Terral to Kansas City, different to that from Kansas City to Chicago?

A. Well, I could not tell you anything about service. I could only tell you by second-hand information. It is an operating matter and we will have one of our operating officials on the stand who will give all that information.

Q. How far east of Kansas City does your 23½ cent rate apply on shipments to Chicago?

A. Oh, I should think 140 miles.

Q. 140 miles?
A. Yes, sir.
Q. So that it will be about 460 or 470 miles from Chicago or 360 or 370 miles, rather, that the 23½ cent rate applies?
A. Yes, sir.
Q. If the 23½ cent rate for 367 miles from Western Iowa to Chicago is too low, what about the 16¼ additional that you charge from Kansas City to Chicago on the Texas shipments?
A. That is too low, also.

The COURT:

Q. What about the packing house products and dressed meat rate from Kansas City? Do you think that is too low, the 20 cent rate?
1066
A. Yes, sir.
Q. You think that ought to be raised up to 23½ cents?
A. I think it ought to be raised up considerable particularly dressed meat. Packing house product is a better traffic, loading pretty near 30,000 pounds. The dressed meat is altogether too low.

The COURT:

Q. Is there much more to examine him about that is different?
Mr. COWAN: There are other points I want to bring out.

Q. Now, in regard to the dressed meat and packing house product rate, you did not make that as an exercise of your judgment, so far as you know of?
A. I know we did not. If it should have been ten cents, we probably would have adopted it.
Q. You have a 20 cent rate on live stock from Kansas City to Chicago, if it originates west of the river?
A. Yes, sir.
Q. Does that rate apply only on shipments which have come in to the river?
A. Yes, sir.
Q. By rail?
A. By rail.
Q. Isn't it a fact that in all such cases there is a published rate from the point of origin to Chicago that does not have a greater difference than 20 cents. Take Topeka, for example.
A. What do you mean by difference?
Q. Topeka, Kansas, and Chicago, that is not more than 20 cents greater than the Kansas City rate to Chicago?
1067
A. Now, just on that——
Q. What I am trying to get at is whether that proportional rate from Kansas City there applies except on a shipment which you have taken the Chicago rate on with not a greater difference to begin on?
A. Well, that 20 cent rate did apply absolutely for quite a period in 1902. The 20 cent rate absolutely applied in 1902, for quite a long period on all rates except on the Texas stock.

Q. Do you mean to say that there was a 20 cent difference on all the stuff shipped in from Kansas?

A. No, but the roads did not use the balance of the rate. It is a question now whether the balance of the rate is a legal rate or not.

Q. Isn't it a fact that the proportional rate used on cattle was in order to give the packers who buy the cattle on the Missouri River a chance to ship them at a lower rate than the 23½ cent rate?

A. No, the idea was to give the Kansas stock man a chance to stop at Kansas City and take advantage of the market if he wanted to and then come on to Chicago and not pay any more freight than he would have if he had come direct.

Q. Are you certain of that?

A. Yes, sir.

Q. Isn't it a fact that there is not a Kansas shipper that
1068 cannot ship from his own station to Chicago and bill to Chicago with the privilege of the Kansas City market, and, if he don't sell, to come on to Chicago on a rate that is less than 20 cents?

A. Not in every case.

Q. What advantage would it give the Kansas shipper if he could bill out from his own station to Chicago, the idea being that if he did not go on he paid the local rate to Kansas City and if he did go on he paid the rate through to Chicago?

A. I am trying to state that the question arose as to whether the balance of the rate was a legal proposition, and you will probably remember that in the early days of the Interstate Commerce Commission lawone of the first suits heard was in regard to the balance of the rate proposition and it was not definitely settled in 1902 when the question arose again, and it was decided that a 20 cent proportional rate was the only legal rate to be applied on any live stock no matter where it came from and for a long time all stock that went to the Missouri River came out again, paid 20 cents to the line that brought it in. If you brought a car of live stock in it would take our local rate and if the Milwaukee & St. Paul took it out we understand that they collected 20 cents, when the balance might have only been 18 cents.

Q. If it ran over your line it went on the 18 cent rate?

1069 A. It went on the original bill. There was no 18 or 20 cents about it.

Q. Suppose the live stock changed ownership at Kansas City?

A. Then with us it would be a 20 cent rate.

Q. Who was it that would get the advantage of the 20 cent rate or of the shipment at the 20 cent rate excepting the speculators at Kansas City who bought the live stock and shipped it on on a new billing?

A. The 20 cent rate was made for the purpose——

Q. Does it apply to people who drive their cattle in?

A. No, not if we know it.

Q. So then you give to the man who buys and rebills and makes a new shipment, 3½ cent less rate than you do to the man who was feeding his cattle near Kansas City and drives them in, is that right?

A. That is right.

Q. Isn't it a fact that it was the custom previous to the publishing of that 20 cent proportional rate, so-called to Chicago, that when the packers bought the live stock and shipped it out, they did it on the 23½ cent rate and were rebated down to the balance of the through rate? Isn't that true?

A. I could not answer definitely as to that but I will say frankly I think it would be true if they could show that the cattle originated west of the Missouri River. I have so testified before the Grand Jury in the beef case.

1070 Q. Are your packing house products and dressed meat rates maintained today entirely?

A. I believe absolutely entirely. If we don't get any business the last thing we do is to accuse a competitor now of cutting the rate.

Q. When did that stop?

A. I don't remember the date but it has been in pretty good condition on packing house products and dressed beef for the last two years, anyway, and probably longer.

The COURT:

Q. Three years?

A. Three years at least.

Mr. COWAN:

Q. Is it not a fact that it was the custom or a frequent occurrence, at all events that it occurred, that there was a less rate paid than the published rate on the packing house and dressed meat products, say, probably two years ago?

A. Well, how long prior?

The COURT:

Q. Prior to the injunction, say?

A. Well, I will have to say in answer to that that I do not remember any case so far as our road is concerned.

Mr. COWAN:

Q. Would you know?

A. Possibly not. I was not handling that line of business at that time.

Q. Is it not a fact that a lower rate tends to increase traffic in the direction that the lower rate is made?

1071 A. Well, I could not answer that generally.

Q. Is that the tendency?

A. Well, that is putting the cart before the horse. We very often make a lower rate to increase the business.

Q. Well, does it do it?

A. When we do it with that deliberate intention usually, yes, sir, but to reduce your rates haphazard would not necessarily increase the traffic.

Q. Suppose you reduce the rate on live stock from points between Kansas City and Chicago and between Omaha and Chicago, would that tend to increase the traffic in that direction?

A. I think not. I think the tendency of the western country, Iowa, Kansas and Nebraska, is to decrease the shipments of grain

and increase the shipments of live stock. That is the history of every state, I think, the tendency is gradually to increase in the cattle irrespective of the rate, providing the rate is not prohibitive.

Q. A reduction in the cattle rate to one place, as against another, wouldn't it tend to increase the shipments in that direction? Is that your meaning?

A. That is a very broad way of putting it. If we were to reduce the rates on live stock from Iowa to Omaha, it might have a tendency to induce certain shippers to ship to Omaha instead of Chicago.

1072 Q. Suppose you reduce the rates to Chicago, what tendency would that have?

A. Oh, if they were reduced a great deal it might have that tendency.

Q. Suppose it was reduced 3½ cents, would that have that tendency?

A. I don't think it would increase the shipments to Chicago. There are other inducements that bring the freight to Chicago.

Q. Why do you think it would not induce the shipments?

A. I think the shipper has a preference for the Chicago market, anyway.

Q. Is it not a fact that a very large proportion of the live stock shipped by your road from Iowa is shipped to Chicago?

A. Yes, a very large proportion.

Q. Do you know what proportion of your total Iowa shipments to market come to Chicago?

A. I don't think I have that.

Q. Do you have in mind some approximation of it?

A. I would say about 60 per cent. I am talking of cattle. Not as much as that of hogs.

Q. Now, you have testified that the live stock rates were too low, and the dressed beef and packing house product was too low. What rates are high enough?

A. You mean on any comm-dities?

Q. Anything?

A. Well, that is a difficult question. I have not examined other rates like I have live stock.

1073 Q. Did you testify in the investigation of the grain rate case when the advance had been made in the proportional rate to the Mississippi River of two cents a hundred, and they investigated the reasonableness of it about two or three years ago?

A. No, I did not testify in that case.

Q. Do you know whether or not it is a fact that at that time it was contended by your road in that hearing that those rates had been too low previously?

Mr. SEVERANCE: I object to that, as immaterial.

The COURT: The objection is sustained.

Mr. COWAN:

Q. How much does it cost you to haul a carload of cattle from your western Iowa points to Chicago in the manner in which the business is done?

A. I have not any idea.
Q. What is the profit that you make upon it?
A. I don't know that we make any.
Q. Do you know that you do not?
A. I do not, no.
Q. How much profit do you make on a carload of packing house products or dressed meats from Missouri River to Chicago?
A. It is impossible to tell.
Q. Do you know what it costs to perform the service on the average per car load?
A. No, sir.
Q. Is it not a fact, Mr. Gower, that rates of freight are not made for the purpose of producing an equivalent profit per car or per ton on freight to other freight or to the average of other
1074 freight?
A. Yes, that is true.
Q. You don't undertake to move your grain on the basis that each carload you move shall pay the same profit that some other carload of grain paid, do you?
A. It is impossible.
Q. Is it not a fact that you participate in grain traffic from Kansas City to Galveston for export, at 17 cents per hundred pounds?
A. Yes, sir.
Q. And that the grain that goes from Ft. Worth, locally, to the same point is 26 cents?
A. Yes, sir.
Q. Isn't it a fact that grain shipped from Kansas City and from Missouri River points to Chicago moves on a basis of 9 cents proportional to the Mississippi River and 3 cents to Chicago?
A. Yes, three cents over the Mississippi River to Chicago.
Q. From the Missouri River to the Mississippi of 9 cents and Chicago 3 cents additional?
A. Yes, sir.
Q. The local rates you figure on on grain was 16 cents from interior Iowa points to Chicago?
A. On wheat.
Q. Over the same line?
A. Yes, sir.
Q. What is it on corn?
A. 15 cents.
Q. In making your estimate in regard to the amount of tonnage in a car of wheat, and the tonnage in a car of cattle, you estimated the return of the empty car in the case of the cattle?
1075 A. I figured 75 per cent. of it.
Q. Isn't it a fact that you take the empty car to the points where you get the corn in Iowa, in the case of the grain?
A. Yes, but we generally load it back very near the destination.
Q. Now, the grain movement from—the grain movement, Mr. Gower,—isn't it a fact that you are running often trains of empty grain cars out to get the grain?
A. That may be for a short period of the year, yes.

769

Q. Isn't it at short periods of the year that grain moves, dependant on the market conditions?

A. No, the grain moves in the fall and winter.

Q. Isn't the grain made to move largely because of the market conditions at Chicago? If the grain market is high, the grain will move?

A. Chicago is not the only market that grain moves to. If the Chicago market is better than Galveston or Memphis, or St. Louis, it will come here, yes, sir.

Q. Now, on live stock shipments you don't, do you, on your road make the same profit off each carload of live stock that is moved per mile or per hundred miles, do you?

A. Oh, no, we have to take the tariffs as we find them, whether they are high or low.

Q. No rates are based upon the idea of each article paying a certain proportion of the operating expenses and a certain — of
1076 the interest and dividends?

A. That would be impossible.

Q. Nobody takes the interest account and the dividends that they expect to pay and the operating expenses, and figures a rate on any commodity on that basis, do they?

A. No, sir.

Q. Now, you state that if you reduced the rate from Western Iowa points on live stock, you were of the opinion, as I understood you, that it would have some effect on the rates from the west in the sense that it would be used as a comparison. When you put in the 20-cent proportional rate from Kansas City, did that have any effect on the other rates, were they reduced on that account?

A. No, I don't recall of any reduction.

Q. What are the terminal charges that you pay at Chicago on dressed meat and packing house products, carloads delivered at Chicago?

A. Forty cents switching each way, 40 cents trackage each way, and switching two dollars.

The COURT:

Q. Forty cents for what?

A. Switching for the loaded and empty cars, two switchings.

Mr. COWAN:

Q. Total $2.80?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Now, in the case of the live stock you pay only 40
1077 cents each way?

A. And trackage, I mean an unloading charge of 25 cents and the cost of the engine and crew for getting the business out to the stock yards.

Q. What engine and crew takes the packing house product and the dressed meats in?

A. I could not answer you only second hand on that subject. An operating official will be on the stand to give you all the detail about that.

Q. Do you pay a bridge charge at Omaha, or do you have your own bridge?

A. We have a contract.

Q. You have the expense of maintenance?

A. Not at all. We have an annual contract.

Q. What does that amount to per car, the business handled out of South Omaha?

A. I have never figured it.

Q. How much is the total that you pay for the use of the bridge at Omaha?

A. I don't know.

Q. You have an idea about it, haven't you?

A. I have no idea about that.

Q. The roads which do not have a contract for the bridge, what is the average charge at Omaha?

A. On live stock?

Q. No, on packing house product or meat?

A. Well, I could not say, I do not know.

Q. Take the package house products in delivering to the yards here. Well, let us take the packing house products that is
1078 not delivered to the yards here. Suppose it was destined east of Chicago, what switching charges do you pay them?

A. Not any.

Q. How is that?

A. Not any.

Q. Have you a contract for cleaning your cars?

A. I could not answer. That is an operating proposition and I don't know.

Q. You don't know?

A. No, sir.

Q. Is it not a fact that you charged the shippers on your line this side of Kansas City for the bedding that you furnish them for the bedding of cars?

A. If we furnish straw or hay we charge them but not for sand. The sand we furnish free. I think that is right.

Q. Are you certain of that?

A. Well, there has been some discussion of changing that.

Q. Heretofore how has it been done?

A. Well, the rule has been always to furnish the sand free. We have to haul the sand from different points as we have not got any, and we furnish the sand free and leave it to the shippers to put it in.

Q. What are some of the principal shipping points on your line in Missouri? Tarkio, is that a big shipping point?

A. It is not on our road, but Cameron is.

Q. Do you claim that it costs you more money to send out a local train and pick up a full train of live stock which we will assume

gets a train by the time it reaches a first division point out of
1079 Missouri River, than it would to haul a full train of live stock from the river to such a point?

Mr. SEVERANCE: That is not cross-examination, and I object to it. That was not gone into.

The COURT: Objection sustained.

Mr. COWAN:

Q. Have you got a statement of the total amount of damage claims paid on dressed meat and packing house product by your company?

A. For the year 1905?

Q. Well, or any other year that you have got in mind?

A. We paid $3,000 in 1905.

Q. What was the total number of cars you hauled?

A. I am afraid I have given all my statements in. Dressed beef and packing house products?

Q. Yes.

A. 7781.

Q. And the damage claims amounted to how much?

A. $3,000.

Q. That was the total damage claims paid for all purposes?

A. No, we paid $3,000 for the claims on dressed beef and packing house products for the year 1905.

Q. That includes your total payment?

A. Yes, sir.

Q. Now, do you recollect what the total payments were on live stock for 1905?

A. No, sir; I intended to have that here but our auditor misunderstood the question and is still working at it. We hoped
1080 to bring it over this afternoon but he only had three months completed.

Q. Where is the division point on your road at which your live stock train- from Iowa are generally made up into full trains, either live stock or something else?

A. Nitick.

Q. Do the trains in which live stock are carried have more or less loaded cars of freight than the trains in which dressed meats and packing house products are carried?

A. I could not answer that.

Q. Do you run live stock trains as regularly, through trains, from points on the River to Chicago?

A. I could not answer those questions of operation only in the most superficial manner.

Mr. COWAN: That is all.

Re-direct examination by Mr. BAXTER:

Q. You were asked whether you knew of any territory other than that between the Missouri River and Chicago where the rates on packing house products were less than the rates on live stock. I

understood you to say that you could not recall any. I will ask you if you know of any territory except the territory between the Missouri River and Chicago where one of your competitors has put in a lower rate on the packing house product than is prevail-
1081 ing on the live stock?

A. Do I know of any territory?

Q. Yes.

A. No, I don't recollect of any.

Q. You were asked if your rates were made with relation to the cost of performing the service. I will ask you if there are not a great many commodities where your division of the through rate, especially on this long distance transcontinental traffic yields you a revenue very much less than the average cost of the operation per ton per mile as shown in your annual report?

A. Yes. The more through business you have the less will be your rate per ton per mile, the less you will get per ton per mile. That does not necessarily show that it will make the net revenue lower. The rate per ton per mile is no criterion at all of the earnings of a railroad.

Mr. COWAN:

Q. Did you bring over your printed annual reports?

A. I left word for them to be sent over and they will be here before you adjourn.

Q. I will ask you now, as you are on the stand, whether those reports contain accurate data, or data which is regarded as being an accurate statement of your financial condition and operating expenses?

Mr. SEVERANCE: That would be all right if he knows anything about it. He says he don't have anything to do with the operation and he probably don't with the finances, do you?

1082 A. No, sir.

Mr. COWAN: Well, statistics concerning the traffic and operation, are they correct?

A. I could not say whether they are correct. I will say that we accept them as such in our department.

Examination by Mr. SEVERANCE:

Q. You were asked by counsel if he did not have a higher rate on dressed meat from Denver to Omaha. You said that there was no such rate, it was only in the classification. There is not any dressed meat moving from Denver to Omaha, is there?

A. No.

Q. Nor there are not any cattle moving down to Texas from these points that he has cross-examined you about?

A. Very rarely any cattle go south.

Q. Isn't it a fact that in all that line of questions where the cattle rate was lower than the dressed meat rate, he asked questions as to the opposite direction from which the product or the live animal did move?

A. Except in reference to Ft. Worth.

Mr. SEVERANCE: That is all.
The COURT: Call the next witness.

1083 MARK D. FLOWER, called as a witness on behalf of the defendant, the South St. Paul Stock Yards Company, being first duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live?
A. St. Paul, Minnesota.
Q. What is your business?
A. I am President and General Manager of the St. Paul Union Stock Yards Company.
Q. How long have you occupied that position?
A. About sixteen years.
Q. Where are the stock yards of that company located?
A. At South St. Paul, Minnesota.
Q. How far is that out of the city of St. Paul?
A. Four miles below the city.
Q. Down the river?
A. Below the city on the Mississippi River.
Q. When were those yards built?
A. They were built in 1886 and 1887.
Q. You have been president, then, nearly all the time the yards have been in existence?
A. Nearly so.
Q. What packing houses are located at these yards?
A. The principal packing house there is Swift & Company. There are some smaller packers there.
Q. What are their names?

1084 A. Well, McCormick & Company, and Brunsen & Company and the Armour Packing Company do some killing there in one of these houses, or have some killing done for them, rather. That is perhaps the better way to put it.

Q. By whom?
A. By McCormick.
Q. That is a small matter, though, isn't it?
A. A small packer and it don't amount to a great deal.
Q. Are you familiar with the rates upon cattle and packing house products in and out of South St. Paul?
A. Fairly so, I think.
Q. And to Chicago?
A. Yes, sir.
Q. It is claimed in this proceeding on the part of the complainant that the rates upon live stock to Chicago from South St. Paul and Minnesota points generally below South St. Paul should be as low as the packing house rate from South St. Paul. Now, if that reduction in live stock rates was put into force, what effect would it have,

in your opinion, upon the industries at South St. Paul including your stock yards?

A. I think it would have a serious effect. The tendency would be to decrease the shipments to our market and increase the shipments to the Chicago market.

Q. Have you any knowledge with reference to the relative railway service given to shipments to Chicago and to South St. Paul from points in Southern Minnesota?

A. Yes, sir.

1085 Q. What about it?

A. Well, the railroads, the service on all of the railroads up in that country is especially in favor of Chicago.

Q. What way in favor of Chicago?

A. Well, their trains are arranged on better time and in such a way as to connect with their scrub tracks or feeder lines, and they connect with their main systems and their trains generally are made up for Chicago.

Q. How long does it take to get stock into Chicago from a point, say, 100 miles south of St. Paul?

A. About 20 to 22 hours.

Q. How long did you take to get stock from those same points, say, from down around Wells, between there and Mankato, how long does it take to get stock from there up to South St. Paul?

A. The distance in there is about a hundred miles from South St. Paul and nearly 400 miles from Chicago. It is perhaps 360 or 370 to Chicago. On the Wells division of the Milwaukee Railway, which is a new division that has been built within the past two years, running over to Mankato and across from Mankato to Farmington——

Q. I don't care about the details. How long does it take to get stock to St. Paul and how long to Chicago?

A. It takes nearly 24 hours to get stock to St. Paul and 24 hours to Chicago.

1086 Q. How far is that from St. Paul, those points?

A. Within a radius of about a hundred miles; in some instances 120 or 125, and in some instances shorter.

Q. Are there other cases of the same character where stock can be shipped into Chicago as readily as into South St. Paul where there is as great a difference in the distance?

A. There are other cases where it is not as marked as it is there, but where the service is so arranged that the stock can go to Chicago without any serious delay, but cannot come to our market without serious delay. One instance I would refer to is one of the Milwaukee short lines that runs from Wabashaw on the River division at about Zumbrota.

Q. Wabasha is only about 70 miles below St. Paul?

A. About 70.

Q. And Zumbrota is how far from Wabasha?

A. Forty or 50 miles, 40 probably.

Q. Back from the river?

A. Back from the river.

Q. Joining the main line from Wabasha?

A. Joins the main line from Wabasha.

Q. Well, go ahead with your statement.

A. The Milwaukee, bringing stock off of that line, it has to lay over at Wabasha, if it comes to St. Paul, several hours. If it goes to Chicago and the train is on time, it makes a fairly close connection.

1087 Q. So that you are able to state that as a general proposition the train service is so organized as to give straight rapid service into Chicago, and all kinds of delays in getting up to your market from these points in southern Minnesota?

A. Yes, that is undoubtedly correct. I don't consider that on the part of the railroads, as being or representing any feeling against us or against our market, but it is in the interests of a larger revenue and the longer haul. That is the reason it is done, undoubtedly.

Q. Do you recollect any case where the tariffs have been readjusted by the railroads for the purpose of diverting the traffic to Chicago?

A. A number of years ago after we had our packing house established, we began to draw live stock into our market off from the Winona and St. Paul divisions of the Northwestern Railway.

We drew live stock as far east as Rochester, Minnesota, and as far west as Dakota, the south Dakota line. A considerable quantity of the live stock which we received in those days came from that country along that line. The Northwestern Railway shortened its time and made numerous changes in its tariff, reducing the rate to Chicago.

Q. You mean shortened its time to Chicago?

A. Shortened its time to Chicago and reduced its rate,

1088 but made no corresponding reduction either in time or rates to our market. I took the matter up with the traffic manager by correspondence. I think Mr. McCullough, in fact I know, he was the traffic manager at that time, but I received no encouragement in his replies to my letters. I finally considered it important enough to come to Chicago. I saw Mr. McCullough and talked it over with him. He was very courteous and pleasant, but he frankly told me that it was according to the policy of his line to do everything they could to increase its revenue, and that the long haul was what they were after, and that he could not do anything about changing the plan that they had adopted.

Q. Now, do you know whether, as a matter of fact, this practice of giving better service to Chicago than to South St. Paul from southern Minnesota has actually resulted in the loss of stock to South St. Paul?

A. I have no doubt of it at all, I am certain that that is the case.

Q. Have you ever been so informed by shippers?

A. I have been so informed by numerous shippers at different times covering a period of several years past, that the train service did not favor our market, and that the rates were rather in favor of Chicago.

Q. Even now?

A. Yes, and now, too.

Q. What town is the chief competitor of South St. Paul
1089 in this territory?
A. Chicago.
Q. Almost your only competitor?
A. Well, we have some competition at Sioux City, but that is confined to a very limited part of our territory in the southwestern part of the state.
Q. Some hogs go to Austin?
A. Yes, they have established a new packing house at Austin and they draw some hogs.
Q. Have you prepared a statement of tables showing the actual receipts of cattle and hogs shipped to South St. Paul from southern Minnesota for the last five years and also a table showing the number of live stock listed for taxation during that time in various counties in southern Minnesota?
A. I have.
Q. Will you produce that?

The COURT: You want to file that?
Mr. SEVERANCE: Yes.

A. These tables that I have prepared show that in southern Minnesota—they cover a period of five years. During that time there has been a very marked decrease in the number of cars of live stock coming from that territory which is very close to us, to our market.

The COURT:

Q. A gradual decrease?
A. A very decided decrease.
Q. How has it been lately, the last two years, has it been decreasing under these new rates?
1090 A. Yes, sir.
Q. The change ought to have made it better for you?

Mr. SEVERANCE: If it had not been for the change they would have been wiped off. The stock rates, as your Honor will see by an inspection of the tariffs, are all in favor of Chicago now. The result is that under the present tariffs, as between South St. Paul and Chicago, Chicago gets it all.
The COURT: These rates don't cut much figure in it, then, it is the market that cuts the figure?
Mr. SEVERANCE: No, that does not follow.

The COURT:

Q. Are any of these large packers at St. Paul?
A. Yes, sir.
Q. Which one?
A. Swift.
Q. How large a packing house is it?
A. They have a very large packing house there; they have a capacity for 4,000 hogs a day and 4,000 beeves a day and 4,000 sheep a day.

1091 Mr. SEVERANCE: I was about to offer the tables, your Honor. I request this paper consisting of four sheets be marked "Flower Exhibit No. 1."

(The Document was marked as requested.)

The WITNESS: Those tables in Southern Minnesota give the rate to St. Paul and to Chicago, and also the distance to both markets. I omitted to state that.

Q. And this table "Exhibit 1" shows the receipts of cattle by car loads?

A. Stock.

Q. Of stock I mean by car loads from the Southern tier of counties, and next to the Southern tier of counties, and the third tier of counties, running across Minnesota from west to east, and also from the northern tier of counties of Iowa, does it not?

A. Yes sir.

Q. Gives and shows the extent of this movement to South St. Paul, and also shows the rates in force from these various points to Chicago and to St. Paul and the distances from the principal town in each county to Chicago and to St. Paul?

A. Yes sir.

Q. And under those rates, and under the service as you have described it, the receipts at South St. Paul have fallen off to the extent shown by this table?

A. Yes sir.

1092 (The table marked "Flower Exhibit No. 1" was filed with the Court as part of the testimony of the witness.)

FLOWER, EXHIBIT NO. 1. 1093

M I N N E S O T A ,

SOUTHERN TIER OF COUNTIES. EAST AND WEST RAILWAYS MORE OR LESS DIRECT TO CHICAGO.

C A R L O A D S .

County.	1900.	1901.	1902.	1903.	1904.
Rock	--	11	4	--	--
Nobles	52	73	34	18	10
Jackson	73	47	64	36	12
Martin	100	79	88	34	29
Faribault	113	136	61	80	34
Freeborn	147	163	141	131	44
Mower	132	221	126	94	39
Fillmore	9	19	2	--	3
Houston	--	1	--	--	--
Totals	626	780	520	363	171

County.	Town	Distance. St.P.	Chgo.	Tariff. St.Paul. C.	H.	S.	Chicago. C.	H.	S.
Rock	Luverne	210	386	15	18	18	25	26	30
Nobles	Worthington	177	522	17	17	17	*	*	*
Jackson	Jackson	203	496	17	*	*	25	26	29
Martin	Fairmont	179	470	16	16	16	24	26	27
Faribault	Winnebago	160	453	14	14	14	25	25 1/2	26 1/2
Freeborn	Albert Lea	119	412	12	12	12	24	25	25
Mower	Austin	100	392	*	*	*	25	25	25
Fillmore	Fountain	141	348	14	14	14	22	24	25
Houston	Caledonia	188	340	15	18	18	20	24	25

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MINNESOTA

1094.

THIRD TIER OF COUNTIES. EAST AND WEST LINE MORE OR LESS DIRECT TO SAINT PAUL.

CARLOADS.

County.	1900.	1901.	1902.	1903.	1904.
Lincoln	28	44	56	95	72
Lyon	184	247	235	298	300
Redwood	173	220	297	472	506
Nicollet	203	259	296	345	274
Le Sueur	268	374	361	500	588
Rice	196	307	313	345	379
Goodhue	469	482	464	473	584
Wabasha	188	210	144	101	64
	1709	2113	2166	2629	2767

County.	Town.	Distance. St.Paul.	Chgo.	Tariff. St. Paul. C.	H.	S.	Chicago. C.	H.	S.
Lincoln	Tyler	194	548	18	18	18	32	34	36 1/2
Lyon	Marshall	165	536	15	15	15	31	32 1/2	32 *
Redwood	Redwood Falls	152	497	13[2]	13[2]	13[2]	28	31	34
Nicollet	St. Peter	74	439	12	12	12	25	26	28
Le Sueur	Le Sueur	62	455	11	11	11	25	26	27 1/2
Rice	Faribault	52	440	p[2]	p[2]	p[2]	25	26	27
Goodhue	Kenyon	53	367	p[4]	p[4]	p[4]	25	26	27
Wabasha	Wabasha	71	341	11	11	11	22	25	27

1095.

MINNESOTA

Second tier of Counties, having east and west direct lines to Chicago.

CARLOADS

County	1900	1901	1902	1903	1904
Pipestone	68	29	9	2	-
Murray	56	56	46	16	6
Cottonwood	66	73	64	17	41
Watonwan	252	318	324	232	105
Blue Earth	183	284	190	171	151
Waseca	271	363	336	286	167
Steele	221	295	206	210	90
Dodge	307	350	332	238	144
Olmstead	11	8	11	19	37
Winona	10	8	4	7	1
	1425	1777	1621	1198	742

Tariff

County	Town	Distance St. Paul	Distance Chgo.	St. Paul C	St. Paul H	St. Paul S	Chicago C	Chicago H	Chicago S
Pipestone	Pipestone	283	576	16	18	18	28	32	33
Murray	Slayton	186	531	17	17	17	26	28	31
Cottonwood	Windon	148	493	16	16	16	25	27½	30
Watonwan	St. James	122	467	15	15	15	25	27	29
Blue Earth	Mankato	86	431	13½	13½	13½	25	26	28
Waseca	Waseca	86	402	12	12	12	24½	26	27
Steele	Owatonna	67	387	*	*	*	24	25	27
Dodge	Dodge Center	72	368	*	*	*	23	25	26
Olmstead	Rochester	92	347	15	15	15	22	24	25
Winona	Winona	102	308	15	15	15	19	22	23

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I O W A

TEN COUNTIES IN THE NORTHERN TIER IN WHICH RECEIPTS AT SOUTH ST. PAUL ORIGINATE.

CARLOADS.

County.	1900.	1901.	1902.	1903.	1904.
Kossuth	4	1	2	1	1
Winnebago	100	38	10	7	-
Hancock	1	--	1	-	1
Worth	33	35	42	28	20
Cerro Gordo	19	28	11	1	2
Mitchell	118	140	58	42	15
Floyd	4	2	4	2	-
Howard	56	161	51	11	8
Chickasaw	56	122	27	3	-
Winneshiek	11	24	5	2	-
	401	551	211	97	47

County.	Town.	Distance St.Paul.	Distance Chgo.	Tariff. St.Paul. C.	St.Paul. H.	St.Paul. S.	Chicago. C.	Chicago. H.	Chicago. S.
Kossuth	Algona	192	408	19	19	19	23^2	23^2	26
Winnebago	Forest City	183	416	16	16	16	23^2	23^2	25
Hancock	Britt	168	387	17^2	17^2	17^2	"	"	"
Worth	Manly	130	385	15	15	15	"	25	25
Cerro Gordo	Mason City	156	356	"	"	"	"	23^2	25
Mitchell	Osage	150	340	"	"	"	23	24	25
Floyd	Charles City	167	328	"	"	"	23^2	23^2	25
Howard	Elma	131	289	13	13	15	22^2	23^2	25
Chickasaw	New Hampton	148	274	15	14	15	22 1/2	22 1/2	25
Winneshiek	Calmar	170	281	15	14	15	22	22 1/2	25

WISCONSIN. 1097.

Eight counties in which receipts at So. St. Paul are originated.

CARLOADS.

County	1900	1901	1902	1903	1904
Polk	181	116	163	245	223
St. Croix	197	201	251	279	303
Pierce	427	477	463	442	525
Pepin	78	124	92	77	66
Dunn	102	130	88	86	89
Chippewa	19	30	23	22	19
Barron	97	81	123	103	163
Buffalo	177	234	224	177	109
	1228	1383	1427	1451	1520

County	Town	Distance St. Paul	Distance Chgo.	Tariff St. Paul C	St. Paul H	St. Paul S	Chicago C	Chicago H	Chicago S
Polk	St. Croix Falls	52	450	7	8	8	27½		
St. Croix	New Richmond	39	426	6	8	8	25	27	27
Pierce	Ellsworth	43	413	7	8	8	25	27	27
Pepin	Durand	89	389				23	27	27
Dunn	Menominee	60	347	12	13	13	25	27	27
Chippewa	Chip Falls	105	360	12	13	13	23½	27	27
Barron	Barron	90	500	14½	17	17	28		
Buffalo	Alma	91	351	12	12	12			

(A document produced by the witness was here marked "Flower Exhibit No. 2.)

Q. I show you "Exhibit No. 2" and ask you what that is?
A. That is a table showing the rate to Chicago, the rate to St. Paul, and the proportional rate from St. Paul to Chicago; the distances to Chicago and the distances to St. Paul.
Q. From points where?
A. From points in the northwest and west.
Q. Beyond St. Paul?
A. Beyond St. Paul, extending over a country of 900 or 1000 miles.
Q. You mean about a thousand miles from St. Paul is the fartherest point?
A. From St. Paul is what I mean.
Q. This shows from one point 973 miles beyond St. Paul, that is Big Timber, Montana, a proportional rate St. Paul to Chicago, as low as 12.88 cents?
A. Yes sir.
Q. Now, General, I notice here two or three places, Fargo, Jamestown, Moorehead, Larimore, Devil's Lake, and Minot, where the proportional from St. Paul to Chicago is 20 cents. How long has it been 20 cents?
1098 A. I should say about ten or fifteen days.
Q. Since the 13th of this month, hasn't it?
A. Yes sir, about that.
Q. And the through rate to Chicago is not changed?
A. There is something very peculiar about the action of the railroads in regard to this proportional rate.
Q. You know the reason of it, don't you?
A. Yes, I do.
Q. Well, what is it, as to that particular rate, I mean?
A. The railroads entering at St. Paul were dissatisfied with what they considered the manipulation of rates.
Q. Of billings you mean?
A. Of Billings. Live stock coming in from certain territory in the north and west, arriving at St. Paul, the proportional rate would be 18 or 18½ cents. The proportional rate from other places was about 15½ cents, and the railroads discovered finally that everything was moving out of there on the 15½ cent rate.
Q. That is everything from that zone?
A. From that zone. Of course, the shipper coming from a far distant territory where the proportional rate was 13.4 or 12 and something, would always take advantage of that and take the lower rate, but the railroad companies never got to exceed 15½ cents, everything was billed through on the proportional rate of
1099 15½ cents no matter where it originated.
Q. That is lesser, or lower?
A. Yes. Then they increased the proportional rate to 20 cents from certain points without changing the rate into St. Paul, or without changing the rate to Chicago.
Q. So that produces this peculiar situation: Take the rate from

Fargo for instance, the rate is now 34¼ cents to Chicago, and 18¾ cents to St. Paul. It was originally 15½ cents, the proportion through to Chicago which made up the 34¼ cents. Now, they have made the proportional 20 cents, which makes a total of 38¾ cents, and the through rate is 34¼?

A. That is right.

Q. That only applies to points east of Jamestown and Dakota?

A. Yes sir. East of Aberdeen, east of Lakota and east of Jamestown.

Mr. SEVERANCE: I thought that ought to be explained because it is very peculiar. You see the rate into Chicago on what they call the proportional, exceeds 34¼ cents, the through rate. That table Mr. Gower filed states that the 15½ rate — effective prior to that time on one of the tables he filed.

The WITNESS: I want to say, there is nothing moving on that 20 cent rate.

1100 (The document marked "Exhibit 2" and commented upon by the witness, was filed with the Court as part of the testimony of said witness.)

1101

Stations.	Rate to Chicago.	Rate to St. Paul.	Proportional rate St. Paul to Chicago.	Miles. St. Paul.	Chgo.
N. P.					
Fargo	34¼	18¾	20	261	661
Jamestown	39½	24	20	342	742
Mandan	44½	25½	20	449	849
Hebron	45½	27½	18.2	519	919
Dickinson	48	29	19.2	558	958
Wibaux	48	32½	15.8	635	1035
Miles City	48	34	14.4	745	1145
Rosebud	48	35	13.4	778	1178
Billings	53	40½	13.25	892	1292
Big Timber	56	44	12.88	973	1373
G. N.					
Moorehead	34¼	18¾	20	324	724
Larimore	36½	21	20	348	748
Devils Lake	41½	24½	20	409	809
Minot	44	26½	20	527	927
Culbertson	49	35	16.67	700	1100
Glasgow	51	39½	15.26	804	1204
Havre	56	43½	14.38	957	1357
Soo.					
Hankinson	33½	18	20	222	622
Valley City	36	20½	20	307	707
Washburn	44	26¼	17.75	475.7	875.7

Q. Now, you have a map here of Southern Minnesota counties, showing the receipts from those counties of South St. Paul for a period of five years of cattle and calves and hogs and sheep, and also in most cases the number of those various classes of animals assessed for taxation in the county, is that it?

A. Yes sir.

(The map identified by the witness, was marked "Flower Exhibit No. 3" and filed as part of his testimony.)

A. (Continued.) This statement shows the number of cattle and hogs and sheep shipped for a term of five years from these counties to South St. Paul. Another statement on the map shows, during the same five years, cattle, hogs and sheep that were listed for taxation. The map shows that in all cases nearly, the receipts have steadily declined to South St. Paul from this territory. The tax list shows that in most cases, the live stock has held its own or increased, and where it shows to the contrary, it shows only a decrease of from 10 to 25 per cent., while the decrease of stock from the same localities to our market, ranges from 50 to 75 per cent.

1102 Q. Now, have the receipts at St. Paul from all quarters decreased during this period, or have they increased?

A. They have increased from every section tributary to us excepting south and east of St. Paul.

Q. Well, have your total receipts at South St. Paul increased or decreased during the last five years?

A. They have increased very rapidly. They have more than doubles, or about doubled in most things.

Q. Now, are there sufficient cattle killed at South St. Paul to supply the markets tributary to that point?

A. No sir.

Q. How about the territory north of St. Paul, north and west, the ragne towns, like the range towns, the towns on the iron ranges back of Duluth, and Duluth itself, and all of northwestern Minnesota?

A. They receive their beef supply, their meat supply very largely from South St. Paul, at least up to the extent of our ability to supply them.

Q. Yes, now, in addition to your output, where do they get the rest of their supplies?

A. The rest of their supplies are shipped in by other packers from Omaha and Kansas City.

Q. What packers ship in there outside of Swift & Company who have a packing house at South St. Paul?

1103 A. Nelson Morris, and the S. & S. Company.

Q. That is Schwartzschild & Sulzberger?

A. Yes sir, I never attempt to pronounce the name. The Cudahy's.

Q. The Armour packing company?

A. The Armour Packing Company from Kansas City.

Q. Now, can you state whether any considerable quantity of

packing house products is shipped east from the South St. Paul packing houses?

A. Yes, there is a considerable amount, quite a large amount.

Q. Well is it in proportion to the total output?

A. Do you mean of all kinds of products, beef, pork and mutton.

Q. Yes, I mean beef, pork and mutton.

A. I should think, taking the entire output, it is probably 70 per cent. *sg*ipped east.

Q. How about dressed meat?

A. Very little dressed meat, hardly any.

Q. Almost none, isn't that true?

A. Most of it is consumed in the twin cities, and the large cities of Minnesota, the pineries and the mines of Minnesota and the large towns north and west of us.

Q. Now, what kind of a market have you there at South St. Paul?

A. We have a good market, an excellent market.

1104 Q. Upon what do the buyers there base their prices?

A. The buyers base their prices upon the Chicago market, upon all kinds of live stock sold there. The rule is to deduct the freight, pay the Chicago price less the freight.

Q. Less what freight, the local rate or the proportional rate?

A. Well, less the amount they have to pay to ship it to Chicago.

Q. Everything from there is shipped on the proportional rate?

A. Well, less than the proportional rate in that case.

Q. Yes.

A. There are some cases where some hogs are shipped out of there, have been in the past where they paid a little more than the proportional rate.

Q. Now, is it a fact, or is it not, that the market prices at South St. Paul are at times above the Chicago rate less the freight?

A. That is very often the case when the receipts are less than are required to keep the packing houses *is* operation, they will pay larger prices in order to induce the shippers to come to that market. In other words, they pay a premium to get the stock.

Q. Do you know of any cases General, where the prices at South St. Paul have been less than the Chicago price less the freight?

A. I do not know of any case.

Q. Now, the Northern Pacific and the Great Northern

1105 running through to the coast have their termini in St. Paul, do they not?

A. Yes sir.

Q. And they reach up into the cattle country in Dakota and Montana?

A. Yes sir.

Q. What proportion would you say of the cattle shipped in from the cattle country in Montana and Dakota, stops at South St. Paul, and what proportion goes on to Chicago?

A. Do you mean is stopped there to sell?

Q. Stopped there to sell?

A. Yes sir.

Q. And to be packed there, to be killed there?

A. Well, the beef cattle?

Q. Yes, the beef cattle?

A. Of the beef cattle coming from the ranges and the ranches, there is not over 20 per cent. stopped there and bought there.

Q. The balance of it goes through to Chicago?

A. The balance of it comes through on the lower rate to Chicago.

Q. Well then, from what source do the packers at South St. Paul derive their supplies of beef and hogs, from northern Minnesota?

A. Nearly entirely from northern Minnesota and western Minnesota, and somewhat from north Wisconsin.

Q. Northwestern Wisconsin?

A. Yes, northwestern Wisconsin, within a distance of 75 to 80 miles from us.

1106 Q. Have you with you a copy of your annual reports, of your annual report for 1904?

A. I have in my valise at the hotel.

Q. Can you state that the figures shown in that report are correct, General?

A. Yes sir, I supervised that work myself.

Q. You know all the statements copied into the report are correct?

A. You mean in the printed report?

Q. I mean the printed report of the Union Stock Yards?

A. Yes sir, it is correct. It shows the origin of the stock and the numbers covering a series of years.

Q. Well the statements of receipts there are correct as set forth?

A. Are correct, taken from our books.

Q. I think I asked you the question as to the destination of this stock in Southern Minnesota, where your receipts have fallen off, and you stated that a small amount went to Sioux City, and a small amount to Austin, but the bulk of it went to Chicago. Is that correct?

A. That is correct.

Cross-examination by Mr. COWAN:

Q. General, you say that the prices you pay at St. Paul are in all cases, not less, sometimes greater than the price on the
1107 same class and kind of live stock as that paid in Chicago, minus the freight to Chicago?

A. Yes, I think that is almost absolutely correct. There might have been perhaps some cases where it would vary a little.

Q. How long has that been so?

A. Well, it has been so during all the time since Swift & Company have got thoroughly established on that market.

Q. And how long has that been?

A. Well, I should think that statement of fact is true for five years.

Q. Is that a fact that is generally understood?

A. It is the fact as understood by us people at South St. Paul.

Q. Well it is understood by people who are in the business of selling cattle and hogs, is it or not?

A. Well, I don't know what their opinion might be. You know cattle shippers and hog shippers sometimes do not figure those things correctly and they are not always satisfied even when they have the best prices, and the best obtainable prices, but as far as my knowledge goes, it has generally been satisfactory to the shippers.

Q. Well, do you get as much live stock at St. Paul as the packers want there, or is the supply short?

A. Taking the year as a whole, it is short.

1108 Q. During what periods is it long?

A. Well, during the fall months, starting in with about the first of September, September, October and November, our cattle supply from the West is generally sufficient to supply us with cattle. The same is true of sheep. During the months of July, August and September, the supply of hogs which comes from the farms of Minnesota is very short, not over a third of what we want during these months. During the winter month, our large receipt of hogs takes place, and during those winter months, say starting in with December, January and February, our cattle supply begins to run down and runs down again until the Western receipts begin to arrive the next September.

Q. I understood you to testify that your train schedules are arranged so that one can ship live stock to Chicago, a distance of four or five hundred miles as easily, or as quickly as you can ship to St. Paul, 100 or 150 miles?

A. I did not say 500 miles, I said about 400 miles and qualified that a little I think, by saying 375 to 400 miles.

Q. Do they haul live stock slow in going into St. Paul?

A. Not particularly so. It is usually caused by delays in connections with those trunk lines that run through where they connect with some other lines bringing stock to us, and they do not

1109 arrange those connections so as to give quick service.

Q. Is it not a fact that it depends entirely on where the stock originates as to whether it has a good train schedule to St. Paul or not?

A. Well, yes, in a measure that is true. You take the lines in the north part of the State, and you take the Minneapolis & St. Louis line which do not have Chicago connection, and has a connection running west, a line running west from St. Paul, their service is made up with reference to the St. Paul market. That is true of the Soo and of the Northern Pacific and of the Great Northern, but with all of the other lines south of a line drawn parallel across the State with St. Paul, the other is true.

Q. Well, suppose it takes 24 hours to reach St. Paul from some given point, and 24 hours to reach Chicago from the same point, could you name such a point?

A. About—I would not say 24 hours, I said about 24 hours, it runs from 20 to 23 hours.

Q. Well, name a point, and put it at 20.

A. Well, I will name the division of road running from Wells to Mankato and from Mankato to Farmington.

Q. What is the rate of freight from St. Paul to there?

A. I can't tell without reference to my tables.

1110 Q. Well, it is a good deal less than it is to Chicago?

A. Oh, yes, about one-third, yes sir.

Mr. SEVERANCE: Excuse me, let him look at the tables Mr. Cowan. Have you got that table. He can give it exact. It is better than to guess at it. It is a good deal more than a third (handing the witness a paper.)

A. Well, Blue Earth County, this line that I speak of runs through quite a large part of Blue Earth County. The distance from Mankato, the County Seat of Blue Earth County, through which this line runs to St. Paul, is 86 miles. The distance to Chicago is 451 miles.

Q. What is the rate respectively?

A. The distance is about five times, and the rate to St. Paul is 12½ cents on cattle, hogs and sheep, and to Chicago, it is 25 cents on cattle, 26 on hogs, and 28 on sheep.

Q. Now, if your market pays to the man as much as he can get in Chicago, why don't he ship there?

A. I didn't state, I do not state that he can get as much as he can by going to Chicago.

Q. Well, he gets as much net?

A. He can get as much, less the freight from St. Paul.

Q. Well, he gets as much in his pocket?

Mr. SEVERANCE: He don't say that.

A. Yes, I think he does, and more too.

Mr. COWAN:

Q. If he thinks that, why don't he ship to St. Paul?

A. Because of the delays in going there.

1111 Q. Well you said it took about the same time in getting to each place?

A. Yes, it does, but he is subjected to very serious and exasperating delays in one case and in the other he is not, he goes right on to the initial market, which is Chicago.

Q. But he don't get there any quicker?

A. No, he don't get there any quicker, but he goes along a good deal farther. Oh, he may get there a little quicker, and travel quicker.

Q. Is the 15.7 cents, or whatever it is——

A. 15½.

Q. From St. Paul to Chicago on packing house products an advantage?

A. In what way.

Q. Over what it would be if the rate were higher?

A. Well I should think it was something of an advantage, yes; the cheaper the packer can get his stuff to market, the more he can afford to pay for the raw material.

Q. To whom is it an advantage?

A. Well, I should say it was an advantage to the shipper as a rule.

Q. Why?

A. Because I think it would firm up the prices on live stock.

Q. That accounts for him getting these good prices?

A. Well, I think it would have its effect in that direction.

1112 Q. It appears from the statement which you have filed that there is a large shipment of cattle and hogs from the territory within Southern Minnesota to Chicago, a proportionally very much greater than there is to St. Paul?

A. Yes sir.

Q. You don't claim that all of that territory is subject to those difficulties about reaching the market, do you?

A. Well a good share of it, reaching our market.

Q. But they can reach your market as quick as they can reach Chicago?

A. They might reach it as quick, yes.

Q. Now, why is it that you do not have a supply sufficient for your market if your prices are as good, from those sources which are constantly shipping to Chicago?

A. Well for the reasons that I stated a moment ago, that there are exasperating delays in coming to our market and they have to pay something in the way of freight to get to our market, and when they arrive at our market, they have to sell at the Chicago price, less the rate from St. Paul to Chicago. That would mean that it would be an advantage to them to come to Chicago unless we shade—unless we paid an additional price to cover the difference in the rate from his home station to our market.

Q. If the rate from St. Paul to Chicago on live stock was reduced, then that would induce the shipper to ship more live stock

1113 in there because he could get a better price?

A. If it was reduced to Chicago?

Q. Yes.

A. Well it would not induce him to come to our market, it would induce him to go to the Chicago market.

Q. Suppose it was reduced at the same time to your market, you say it is deducted out of the price?

A. Well the rates as they exist now relatively between South St. Paul and Chicago, taking into consideration the terminal charge in Chicago and the terminal charge at South St. Paul, and taking into account further the distance of the haul, is cheaper to Chicago than it is to South St. Paul, there is no question about that.

Q. You say it is cheaper to ship to Chicago now?

A. I say it is a cheaper rate. I do not say it is cheaper to come to Chicago, I say it is a cheaper rate to come to Chicago than it is to us.

Q. What do you mean, cheaper per mile?

A. No, I don't mean that—yes, it is cheaper per mile.

Q. What do you mean, a cheaper rate in toto?

A. I mean that the entire rate to Chicago is cheaper in proportion than it is from the same shipping point to South St. Paul.

Q. Cannot he ship to South St. Paul with the privilege

1114 of that market and then ship on to Chicago?

A. Yes, but in doing that he has to pay the Chicago rate from his own locality through to Chicago, plus something at St. Paul. I don't know just what that is.

Q. Do you get a greater percentage of your cattle from the north-

western range cattle, or from the cattle that are produced in Minnesota?

A. Killing cattle?

Q. Yes.

A. The largest number of killing cattle which we get taking the year as the basis, comes from the farms of Minnesota, South Dakota and North Dakota.

Q. Don't they have the privilege of stopping at your market, and if they don't sell to go on on the through rate from their point of shipment?

A. They do if they bill through to Chicago with the privilege of stopping off and trying our market, then they can go through to Chicago at the rate from their home station to Chicago.

Q. Well don't they always do that?

A. Yes, largely, not always, but probably in a large majority of cases.

Q. They have got nothing to lose by doing that have they?

A. No, nothing at all.

Q. If they sell them, they would pay the local rate to St. Paul, if they don't, they ship on the through rate from their
1115 original point to Chicago?

A. That only applies to stock originating north and west of us, it does not apply to stock originating south of us, as I understand it.

Q. Now, if your Minnesota rates were reduced, would that tend to bring shipments into your place?

A. Yes, it would. And while we do not regard the present relative rates to South St. Paul, and to Chicago as really fair to us, yet the rates are bearable as they exist now, and if we were to get to South St. Paul the same reduction that Chicago got from all of these market counties, we should not be particularly opposed to it, because it would put us on a par with Chicago and that is all we ask.

The COURT: How about raising the rates on packing house products and dressed meats, are you in favor of that?

A. I do not care what they do with the packing house product providing they let the live stock rates to our market, if they create the live stock rates to our market on a fair basis with the rates to our competing markets.

Q. Suppose they put packing house products where they were, about equal with your live stock, then what?

A. That would be a higher price, wouldn't it?

Q. Yes.

A. Well, in that case I think the tendency would be to
1116 injure us, for the reason that it would compel our packers to pay a little higher price for their raw material, and when the packers are prosperous and successful we find that our market sometimes goes above the mere limit of the difference in freight, we get a higher price for live stock. There is another thing too, that I think enters into this which I will be perhaps, excused for mentioning, and that is the shrinkage and the additional time which it usually takes to go to a more distant market.

Q. Shrinkage in the live stock?

A. Shrinkage in the live stock.

Q. They will shrink more coming from the northwest to Chicago than they would to St. Paul?

A. Yes; a distance say of 100 miles to St. Paul, the shrinkage would be less than it would to come 400 miles to Chicago.

Mr. COWAN:

Q. Who owns the stock yards company that you represent?

Mr. SEVERANCE: I object to that as immaterial, who owns it.

Mr. COWAN: I don't think it is, it shows his relation to the company.

Mr. SEVERANCE: That don't make any difference.

The COURT: Do you claim he is interested with the railroads, that the railroads own it, or anything like that?

1117 The WITNESS: The railroads do not own it, or the packers do not own it.

Mr. COWAN: The railroads do not own it, but there are others interested.

Mr. SEVERANCE: You cannot make him produce a list of the stockholders. It is quite immaterial who owns the stock yards.

The COURT: He says the railroads or the packers do not own it. I do not think it makes any difference then, who owns it.

Mr. COWAN: That is what I was going to show.

Mr. SEVERANCE: I do not think it makes the slightest difference. I see no reason why he should gratify Mr. Cowan's curiosity as long as it can have nothing whatever to do with the case.

The COURT: It might have something to do with it if the railroads and packers owned it. He might have an interest in the testimony and it might be viewed from a different point of view.

Mr. SEVERANCE: He is not representing anybody but himself.

The COURT: The objection I have to it, is that it is taking time. Go ahead.

Mr. SEVERANCE: I desire to protest against it, and object to it as incompetent, irrelevant and immaterial, and I further object

1118 on the ground that it is not cross-examination.

The COURT: Let us see what the question is.

(Question read.)

The COURT: He may answer.

A. I think the best answer to that would be, the stockholders.

Mr. COWAN:

Q. Well, now, who are the principal stockholders, and who have the controlling interest, if you know?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant and immaterial and not cross-examination.

The COURT: The objection is overruled. The main objection is, it takes time. Go ahead.

Mr. SEVERANCE: That is not my objection. I do not care how much time it takes.

The COURT: Proceed.

A. Well, the stock of our company is largely owned in Europe, there is considerable of it owned in the United States. It is generally understood that Swift & Company own the controlling interest in the South St. Paul stock yards. I want to state that they do not own a dollar's worth of stock of the St. Paul Union Stock Yards Company unless they have bought it since I have left St. Paul.

Mr. COWAN:

Q. Do they control it?
1119 A. Swift & Company?
Q. You said they did not own it, do they control it?
A. That I do not know, I cannot answer that question.

Mr. SEVERANCE: They do not control you?
A. No.
The COURT: You say you do not know who the control is in?
A. Swift & Company may own not to exceed ten shares.

The COURT: I think that is enough.

Mr. COWAN:

Q. You said Swift & Company, what about the individual members of the various firms in which Swift is interested in the packing business, or some of them owning an interest in the stock yards company?

Mr. SEVERANCE: That is objected to as incompetent and not cross examination.

The COURT: You can answer that.
A. Well, L. F. Swift owns a small interest, I think about 100 shares; I think E. F. Swift owns about the same, and I think Mr. Carden owns about the same, and that is all that I know of connected with Swift & Company that own any of the stock. Mr. Bangs, Swift's Manager at South St. Paul I think owns one share, $100.

Mr. SEVERANCE:

Q. What is the total number of shares in the corporation?
1120 A. There are two million dollars of shares of one hundred dollars each, 20,000 shares, isn't it?

Mr. COWAN:

Q. Who votes the stock at the Stockholders' meeting?

Mr. SEVERANCE: I object to this, your Honor.
The COURT: The objection is sustained.

Mr. COWAN:

Q. Are there any packing house products and dressed meat shipped East via the lake?
A. Yes sir, a good deal.

Mr. SEVERANCE:

Q. Dressed meat, do you mean?
A. No, packing house products, not dressed meats.

Mr. COWAN:

Q. Are there any packing house products shipped in there from Chicago?
A. I do not know that there is any shipped in from Chicago, if there is, the amount is small.
Q. You spoke of having talked with some railroad gentleman, I desire to inquire when it was, you spoke of an extended conversation.
A. I suppose you refer to what I said in regard to Mr. McCullough.
Q. I think that is the gentleman.
A. I should think it was ten or twelve years ago, it was before Swift & Company located at our yards. They have been there about eight years.

1121 Q. Do you attribute the decrease in the amount of business done at your place, the amount of stock shipped in if I understood the statement, I have not read it over, to the rates of freight.

A. Well, I didn't make the statement that there was less stock shipped in; we have been showing great increase every year, a most remarkable increase in the receipt of live stock there for the last three or four years, making about 20 or 25 per cent. a year. I spoke of the stock coming to us from Southern Minnesota and points east of us.
Q. Oh, from Southern Minnesota and points east only?
A. Yes sir.
Q. All of that coming from the points west and north and northwest may come with the privilege of the Chicago market, stop and offer for sale and come on?
A. Yes sir.
Q. And in that there has been a large increase?
A. Yes sir, that country north of us is developing very rapidly in the live stock business.

Re-direct examination by Mr. SEVERANCE:

1122 Q. There is just one question. You state that stock originating north and west of St. Paul could be billed through to Chicago, and if purchased in St. Paul would pay the local rate into St. Paul. If it was not purchased there, it could be sent on to Chicago and the only additional expense would be the proportional?

A. Yes sir.
Q. That does not apply to stock coming from Southern Minnesota, does it?
A. No.

Q. That could not go up to St. Paul and then back over the same track to Chicago?

A. No sir, that would not apply to anything south or east.

Q. Now, it is also a fact isn't it, that stock shipped in from those stations in Southern Minnesota shown on this table that you have introduced bears such a rate into South St. Paul that that rate added to the proportional from St. Paul to Chicago, on which it is testified most of the live stock moves, exceeds in the aggregate those two together, exceed the rate from the point of origin direct to Chicago?

A. Oh, yes sir.

Q. So that you are at a distinct disadvantage in all of that territory?

A. Yes sir.

Examination.

By Mr. BAXTER:

Q. What is the proportional rate upon which you say that live stock actually moves, I mean by live stock, cattle and hogs, actually moves from South St. Paul to Chicago?

A. Why, it differs. I think you misunderstood my answer to that question. There are no hogs coming from northern Min-
1123 nesota or from the territory north and west of us, that is all cattle and sheep in that territory, and that is the only territory where they are entitled to the proportional rate through to Chicago.

Q. What is the proportional rate, General?

A. Why, I stated a few minutes ago that they had recently raised the rate to 20 cents from certain territories east of Lakota, Aberdeen and Jamestown, but that notwithstanding they had raised it to 20 cents, that there was nothing went on that rate.

The COURT: He asks you what it does actually move on.

Mr. BAXTER:

Q. Yes, that is what I want to get at.

A. Oh, well, it differs from different places. My table shows there, I can read it to you if you would like.

Q. It ranges between what figures, General?

A. Well from 17½ cents down to 12 and a fraction.

Q. Well, now, what is the packing house product rate and fresh meat rate from St. Paul to Chicago?

A. 15.7 I think.

Q. That is on fresh meat business?

A. Fresh meat and packing house products.

Mr. SEVERANCE: So that taking those stations you speak of, Mankato and that region of road, the rate to Chicago is 12 cents on cattle?

A. Yes sir.

1124 Q. And the packing house rate from there to Chicago is 15.7?

A. Yes sir.

Q. Making 27.7?

A. Yes sir.

Q. And you said the rate direct from Mankato to St. Paul was 25 cents ?
A. Yes sir.
Q. That is a fair sample?
A. Yes sir.

JOHN M. DALY, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your name?
A. John M. Daly.
Q. With which one of the defendant companies, are you connected Mr. Daly?
A. The Illinois Central.
Q. In what capacity?
A. Car accountant.
Q. What has been your railroad experience?
A. I was three years with the Wabash Railroad as Clerk, switchman and yard master; one year with the Wabash Railroad as Clerk; three years with the Chicago & Northwestern as Clerk; three years with the Chicago Great Western as Car Accountant, Trainmaster and assistant to their general superintendent; about three years with the Nickle Plate Road at Cleveland, as Car Accountant; two
1125 years with the Delaware, Lackawanna & Western at Scranton as Superintendent of Tranportation; one year with the Government Railway of Canada as Inspector of Transportation and organizing their transportation Departments; about one year as General Manager of the Cape Breton Railroad, Cape Breton, Nova Scotia; ten years Superintendent of Transportation for the Illinois Central at Chicago and the Yazoo & Mississippi Valley; two years as Car Accountant with the Illinois Central at Chicago.

The COURT:

Q. At what age did you begin?
A. About fifteen.

Mr. BAXTER:

Q. Then you have had quite extensive experience in the operation of railroads?
A. Yes sir.
Q. On that portion of your road which runs between the Missouri River and South St. Paul on the one hand and Chicago on the other, what is the average maximum number of loaded cars of live cattle and live hogs, that can be hauled by one engine at the speed which is required for that service?
A. Taking our main line in solid trains of live stock, it will average about 27 or 28 cars per train mile; taking our branches and it will reduce that average to possibly 24 or 25 cars per train mile.

Q. For that portion of your roads, what is the average
1126 maximum of loaded cars of dressed product of cattle and hogs that can be hauled by the same engine at the speed which is required for that traffic?

A. About 24 to 25 cars.

Q. For the same portion of your railroad, what is the maximum number of loaded cars of ordinary dead freight that can be hauled by the same engine at the speed which is required for that service?

A. About thirty to thirty one cars.

Q. What is the average weight of the cars employed on your road in the transportation of live cattle and hogs?

A. The stock cars will average about 16 tons, and about an average of 2 tons of bedding and manure.

Q. Making a total of——

A. The total would be 18 tons, about that.

Q. What is the average weight of the car employed in your road for the transportation of dressed or prepared products of cattle and hogs?

A. They will run about 20 tons light, and about 2 tons of ice, making a total of about 22 tons.

Q. What is the average weight of cars employed on your road in the transportation of ordinary dead freight?

A. About 16 tons.

Q. What is the average weight of the contents of cars on your road when loaded with live cattle or live hogs?

1127 A. The hogs will run about 17,000 pounds and the cattle will go a trifle over 22,000 pounds. The average of both is about 9½ to 10 tons. Probably 10 tons.

Q. What is the average weight of the contents of cars on your road when loaded with dressed products of cattle or hogs?

A. Something over 29,000 pounds, or between 14½ and 15 tons.

Q. What is the average weight of the contents of cars on your road when loaded with ordinary dead freight?

A. Moving in the same direction between the same points that the cattle and packing house product moves, our average tonnage is about 23 tons per car of dead freight or freight other than live stock, excepting in that the tonnage of dairy freight, game and fish, I think they excepted in that which they called perishable, and not dead freight.

Q. Speaking of the same direction, you mean from the Missouri River to Chicago?

A. From the Missouri River to Chicago, it will average about 23 tons on dead freight.

Q. On that portion of your road what is the average rate of speed at which trains of live cattle and live hogs are moved?

A. About 19 to 20 miles per hour.

Q. What is the average rate of speed at which trains of dressed products of cattle or hogs are moved?

A. Between 16 and 17 miles per hour.

1128 Q. And the rate of speed that cars of dead freight are moved?

A. From 10 to 12 miles per hour.

Q. On your road, what is meant by the tonnage rating of a locomotive engine, and is it arrived at theoretically or by actual test?

A. The meaning of the term tonnage rating is the number of gross tons of car and contents which an engine can haul over given grades at a given speed. This rating is made after practical tests have been made and tests with dynamometer cars. For example in rating a stock train, the chief dispatcher, the train master, the superintendent, the master mechanic, and mechanical engineer on that division all have a good general idea of what an engine can do with a train of stock, for the reason that the weight of the contents and the car of stock is about the same year in and year out, the speed required is the same. Then they will take for instance, 26 or 28 cars, put an engine on them and call upon the engineer to make the run at the rate of 18 or 20 miles per hour, which is required. With a dead freight train, they will take the average make up of a train that is usually hauled by an engine, so many cars of grain, lumber, coal and other freight that moves in that direction, getting as near to an average train as possible for this reason: That the draw bar pull, or the resistence of a ton of freight depends very largely on how many tons of freight you load into each individual car; and the
1129 second is the speed at which you are required to run that car. This holds good in passenger traffic just the same as freight. If we want to run a train an average of 60 miles per hour, we much reduce our tonnage in cars. The number of cars sufficient to enable that engine to make that time, for the reason that especially in Iowa, and between the Missouri River and the Mississippi River, we have some very frequent grades, it is undulating, the nature of the country and while an engine may run down hill 40 or 50 miles an hour, it must — slower up the hills if it is loaded with an economical load.

To make that plainer, I would state this: On our Chicago Division we can haul with an engine, and we do haul it, that is their rating, 2400 tons on a coal train, if that 2400 tons is contained in less than 45 cars. Now, take 43 cars of 40 tons each, coal cars, loaded to their maximum, there is 1720 revenue tons in that train. We haul it at 12 miles per hour. Now, if, in testing that engine, we put 10 tons of coal in each of these cars, it would take four trains, four engines to haul it, but by loading 40 tons in each car one engine is able to haul it at the 12 miles an hour speed.

1130 Now, if we were to move that coal in 10 ton cars, or lots of 10 tons each at the speed of 18 or 20 miles an hour, we have to make another different rating on it. We would then class it "A" rating, and it would require five engines of the same capacity to handle it that one engine now hauls it at the slower speed; for that reason we have what we call an "A" rating and a "B" rating. The "A" rating is one that applies on trains that are required to make fast speed; the "B" rating is that that applies to trains that are going to make a slow speed; and further the "A" rating applies on cars that contains a light revenue load; the "B" rating on cars that contain a heavy load.

Our fruit, vegetables, strawberries, bananas and merchandise are

all in Class "A" along with live stock and packing house products—are all in class "A".

The "B" class takes lumber, grain, coal, iron and heavy commodities that load heavy in the cars.

An adjournment was here taken until the following day, Wednesday, September 27, 1905, at 10 o'clock a. m.

1131 WEDNESDAY, *September* 27, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon JOHN M. DALY, resumed the stand for further direct examination and testified as follows:

Q. What is the average tonnage rating of the locomotives used on sa-d portion of your road, in the tra-sportation of live cattle and hogs, I mean the portion of your road between the Missouri river and Chicago?

A. The locomotives haul about an average of 780 gross tons per train.

Q. On the same portion of your road what is the average tons rating of locomotives used for the transportation of the dressed or prepared product of cattle or hogs?

A. 867 gross tons.

Q. On the same portion of your road, what is the average tonnage rating used in the transportation of ordinary dead freight?

A. 120 4 gross tons.

Q. Take an engine that can pull a given number of tons over a given railroad, at the rate of 12 miles an hour, what effect would the increase of speed to 18 or 20 miles per hour, have upon
1132 the tonnage that could be pulled by the same locomotive under similar conditions?

A. We make a reduction of about 39 per cent. for going at a speed of 18 or 19 miles per hour as compared with the slow train at 12 miles per hour.

Q. On that portion of your road, what proportion of the trains in which live cattle and hogs are moved is composed exclusively of cars containing live cattle or hogs?

A. About 24 per cent. on the main line divisions.

Q. How is it on your branch lines?

A. Well, there is very seldom a solid train of stock on the branches.

Q. On the same portion of your road, what proportion of the trains in which the dressed or prepared product of cattle or hogs are moved is composed exclusively of cars containing dressed or prepared product of cattle or hogs?

A. I have not been able to find a train that is composed entirely of packing house or dressed beef. There is other freight mixed in always.

Q. On the same portion of your road what proportion of the trains

in which ordinary dead freight is moved, is composed exclusively of cars containing ordinary dead freight?

A. About 42 per cent.

The COURT:

Q. 42 per cent. of what?

A. 42 per cent. of all the trains run east-bound from the
1133 Missouri river to Chicago on our main line districts or divisions is made up of solid dead freight. No stock or packing house products in it.

The COURT: If you explain all these answers I can understand them better.

A. Yes sir.

Mr. BAXTER:

Q. On that portion of your road is preference given to live stock trains over trains loaded with dressed and prepared products of cattle and hogs, or are all of the said trains moved upon an equality?

A. The live stock trains have preference at all times over the trains carrying dressed meats or packing house products.

Q. How is it with reference to trains carrying dead freight?

A. Also over trains carrying dead freight.

Q. What effect does that preference have upon the movement of other freight trains?

A. Well, it delays the other trains, sometimes materially and sometimes immaterially. The movement of live stock from western Iowa or from the state of Iowa to Chicago is made largely on Sundays and Mondays.

About 70 per cent. of all the stock that we handle to Chicago from that territory moves on Sundays in order to reach Chicago for Monday's market, and in moving it on that day each week,
1134 it creates a demand for a larger number of engines. In winter-time we have seven or eight sections which take nearly all the power that we have regularly assigned to those divisions, and by reason of holding this power at the ends of the districts awaiting the arrival of this fleet of stock trains—For example, we may have an engine at Fort Dodge at 1 o'clock in the morning, that operates between Fort Dodge and Waterloo, east-bound on that district and we have got five or six stock trains due to arrive at Fort Dodge at 10 or 11 A. M. We cannot use that engine, although our Fort Dodge yard, may be full of dead freight coming this way, for the reason that if we start it out we will be short an engine to protect the live stock trains arriving.

Consequently, we lose the use of that engine, wher-as the dead freight, the moment an engine is cleaned and gotten ready at the round-house, and if we have a train for it, we put it on and move it out.

In that way, we get the maximum service out of our power which in the winter-time (and during the heavy movement of the traffic) is the one important factor in transportation.

Now, again, by reason of this bunching of the stock for one day's

market, that is five or six or eight trains moving on the Di-
1135 vision east-bound, and they must be all close together in order that the last train will reach the market as near to the first as possible, and as safety will permit. Consequently, we may get two trains west-bound out of the way or ahead of the arrival of this fleet of stock trains. We are a single track load and consequently these trains are side tracked to meet the first section. Now, the six or seven sections, as the case may be, are blocked, one or two stations apart, or one may be delayed for some reason and delay the others behind it. The two west-bound trains must lay in that siding until the last stock train has passed.

Now there is no estimating the damage that occurs or that the railroad suffers when it permits any class of traffic to become congested on a terminal, or delayed. It invariably results in claims that are justified and paid. It frequently, no doubt results in certain patrons at competitive points diverting their business from the road that becomes usually in that condition. And it is no infrequent occurrence in winter—for the past three or four years—for us to have a congested yard at Freeport and Waterloo, especially, from Sunday until Wednesday, and Thursday and sometimes that congestion would extend over the entire week by reason of using the gradual movement of this traffic through those yards when it should
1136 be made, instead of taking the engines and using them all on the stock business.

Q. On that portion of your road, what proportion of the cars intended for the transportation of live stock moves to the points of shipment empty?

A. About 86 per cent.

Q. On the same portion of your road, what proportion of your cars intended for the transportation of the dressed or prepared product of cattle or hogs move to the points of shipment, empty?

A. About 48 per cent. of all the refrigerator cars loaded with packing house products move west, empty.

Q. What do you load the remainder of them with moving west?

A. I would explain that in this way. We operate a very large refrigerator equipment, we have some 2500 refrigerator cars.

The COURT:

Q. Of your own?

A. Yes sir. We load bannanas, fruits and vegetables and clean merchandise freight from the South to points in the north-west via our own line and frequently via the St. Louis gate-way, which refrigerator cars come back to us at Omaha and Sioux City and western points, empty.

We also load a large number of refrigerator cars each day at our freight house, in summer-time with fruits and vegetables,
1137 such as peaches, grapes, bannanas in small lots and strawberries and South Water Street truck fruit and ice these cars west in order to refrigerator and preserve the products, the same as all other roads operating at Chicago, do.

In winter-time, we must supply refrigerator cars at Chicago freight house to protect the same commodities from freezing. That is, a

refrigerator car is a warmer car in winter than the ordinary car and it is cooler in summer. Now, when we get these refrigerator cars west under load, the packers invariably utilize them and load them back with packing house products but not with fresh beef for the reason that our car is not adapted to the handling of fresh beef. They require a tank in which salt can be used with the ice, but on packing house products they do not.

Q. Your road reaches New Orleans, does it not?

A. Yes sir.

Q. And there is where you get your bannana traffic?

A. Yes sir.

Q. On that portion of your road, what proportion of your cars intended for the transportation of ordinary dead freight move to the points of shipment, empty?

A. About 12 per cent., west-bound.

The COURT:

Q. How much is the per cent. *on* live stock?

1138 A. 86 per cent. of the live stock cars return empty.

Q. 48 per cent.?

A. Of the refrigerator cars.

Q. Most of them go back filled?

A. The refrigerators, about 52 per cent. and the box cars, there is 88 per cent. of them go back loaded with merchandise and other freight.

Q. Nearly all the live stock cars go back empty?

A. 86 per cent., yes sir.

Mr. BAXTER:

Q. On that portion of your road, is the movement of live stock and hogs continuous throughout the year or are there periods when there is little or no movement?

A. The movement of live stock in this section covered, between the Missouri river and the Mississippi river, there is 128 per cent. more moved during the five winter-months than during the five summer-months. That is, from November to March as against May and October. It averages 1769 cars against 700 and some or an average of 69 cars per day in winter against 30 cars per day in summer.

Q. During that portion of the year when that live stock movement is light, the summer months, as you just stated, do you find back loading for your live stock cars at that time?

1139 A. In the summer we have some demand for our cars from southern Illinois and from central Illinois points and we use them in that section in summer and we also turn back to the owners of the private cars, the bulk of their cars. We also use some of our old small capacity stock cars in handling brick and ties and we can use about 70 per cent. of our stock cars during the dullest period.

Q. How is it with reference to the movement of dressed products, is that uniform throughout the year?

A. It is about five per cent. heavier during the winter months than during summer. I have got the number of cars, I think, of that. Five winter-months—Well, it is five per cent. greater in

winter than summer. I thought I had the exact number of cars handled for each period but I find I have got it in another place.

Q. There is practically no difference then between your winter and your summer movement?

A. Very little.

Q. In the handling of packing house products?

A. Yes, very little.

Q. During the year ending June 30th, 1905, what amount of revenue was received by your company for the transportation of live cattle and live hogs, between Omaha and stations located between the Missouri river and Mississippi river on the one hand and Chicago on the other?

A. Between the Missouri river and the Mississippi river, the live stock to Chicago, our gross receipts were $433,115.

1140 Q. Now what amount was claimed for damages to those cattle and hogs and persons traveling in charge of them?

A. $14,016 was paid in claims on the handling of the live stock and taking the past five years as an average on personal injury claims it amounts to $9,997 per annum paid for injury to attendants in charge of live stock from that section.

Q. During the year ending June 30th, 1905, what amount of revenue was received by your company for the transportation of dressed or prepared products of cattle and hogs between Omaha and stations between the Missouri river and Mississippi river on the one hand and Chicago on the other?

A. I think an explanation would be in order there, that only about 13 per cent. of our packing house and dressed beef products originating in that section, come to Chicago or go east via Chicago. The balance of it goes to the south and southeast.

The COURT:

Q. What section is that, in Iowa?

A. Yes sir. I am confining all my testimony to the territory lying between the Missouri river and the Mississippi river. Only 13 per cent. of that comes to Chicago. Our earnings on that were $18,411.36.

Mr. BAXTER:

Q. What amount of damage did you pay on that?

1141 A. $390.84 or an average of about $1.16 per car.

Q. Do you remember what that damage was paid for, was it a wreck or what?

A. I don't know, the figures were furnished me by our claim agent after an inspection of his books.

Q. During the year ending June 30th, 1905, what amount of revenue was received by your company for the transportation of ordinary dead freight between South Omaha and stations between the Missouri and the Mississippi river on the one hand and Chicago on the other?

A. On the east-bound dead freight from this same territory, our gross receipts were $920,107.35. That does not include the revenue

received on dairy products or on perishable commodities such as fish, but it includes all the dead freight.

Q. What amount of damages did you pay on account of that dead freight?

A. The best estimate that we can get on that is $7,000.00. The commodities consist largely of hay and grain, shingles from the Pacific coast, wool and fruit from the Pacific cost and oranges.

Q. During said year what was the tonnage of live cattle and live hogs carried over your road between Omaha and stations between the Missouri and Mississippi river on the one hand and Chicago on the other?

A. 99,356 tons.

1142 Q. During the same year what was the tonnage of the dressed or prepared products of cattle and hogs carried over your road from the same stations?

A. To Chicago?

Q. Yes.

A. 4696 tons.

Q. You have already stated that the bulk of your packing house products go to the south.

A. Yes sir, 87 per cent. and 13 per cent. go to Chicago.

Q. During the same year what was the tonnage of ordinary dead freight other than packing house products carried over your road between Omaha and stations between the Missouri and Mississippi river on the one side and Chicago on the other?

A. 395,842 tons.

Q. Does that include horses and sheep and poultry?

A. No sir. No live stock. Just dead freight, as explained in the other.

Q. It does not include butter and cheese or other dairy product?

A. No sir, that is perishable.

Q. Are there or not stock yards and stock pens on your road between the Missouri and Mississippi rivers which are necessary for the transportation of live cattle and live hogs, which are not used in the transportation of dead freight? If so, state the number of them and their cost of construction and maintenance also the cost of insurance and depreciation.

1143 A. We have 125 stock yards located in that territory and the cost is $138,000.00. The value of the ground on which they are located is $102,000.00. The interest of 5 per cent. on the $138,000.00 invested in the yards sheds, etc., is $12,016.00 per annum. The depreciation based on 10 per cent. per annum, the usual standard is $13,806.00. The cost of maintenance, cleaning the yards, and taking care of the water supply, etc., is $15,068.00. We carry our own insurance but our first Vice President made inquiry among the larger insurance companies on the basis of $138,000.00 valuation of the yards and sheds. They named 3 per cent., but it would be impossible to determine what part of the yards and what portions of those yards would burn down in case of fire, so I think that element which amounts to some $4,000.00—I don't think we can get a correct line on the cost of insurance.

Q. What did you say was the value of the ground occupied by your stock yards?

A. $102,000.00.

Q. What are the equipment or appurtenances that belong to your stock yards, side tracks, etc.?

A. Well, at some points and at other points a part of the regular side track is used and we have houses with which we shelter the scales, that is at the entrance of the yard. Then we have got
1144 our alley-ways for driving the stock into the yards and putting them into the pens that they desire to put them in. Then, a great many of our yards are planked and in some cases paved.

Q. You mean the floor of them?

A. The floors, yes sir. The yards are equipped with water where we can get water from our water-tank or we take it in some cases where we pay the city for it. In other instances we sink a well and get a wind-mill pump for it.

Q. It differs with different yards?

A. It differs according to the quantity of business that would be handled there and the kind of business.

Q. Describe briefly the difference between the construction of live stock cars and box cars so as to make it a matter of record?

A. The live stock car is an open slatted car at the sides. The ends are usually closed to prevent cinders and sparks entering. The modern stock car has an overhead receptacle to store hay and feed for the cattle, racks in the roof where the cattle can feed. They have got troughs on the sides where you can water the stock in the car.

The box car, of course, the cars are closed, the box-car is a closed car.

The refrigerator is a well insulated car with door-paddings and hatches padded to retain the cold.

1145 Q. State the cost on your road of box cars in which ordinary dead freight is transported and the cost of live stock cars and state which depreciates the faster.

A. During the year 1903, up to date, we bought and built at our own shops 2691 box cars. They cost us $2,336,494.00, which is an average of about $868.00 per car. On refrigerators, since 1901 to date we have built 1300, that is bought and built, purchased from the car works and built some ourselves. They cost us $1,122,900.00 or an average of $864.00 per car. On the stock cars we built in 1903, 450 at an average cost of $824.00 per car.

Q. Are your refrigerator cars, I mean those owned by your company as expensive to build as the refrigerator cars used by these big establishments in which they have most of their packing house product moved?

A. Well, the cars used in taking care of packing house products—our car is, if anything a better car than the other. Our car is 38 feet long and most of their cars run 36 feet long.

Several years ago when the Illinois Central were handling a large portion of their strawberries and perishable fruits that require strong

refrigeration but not salt or freezing, we had all kinds of ordinary refrigerators; Armour's, C. F. P., C. F. X. cars. And we
1146 built a plain galvanized iron end box refrigerator the same as we now build in that same service, and 90 per cent. of the shippers preferred our car as a better refrigerator car.

But as I stated before, our car would not do for handling fresh beef. The fresh beef car must maintain a temperature below freezing in order to carry the meat in the same condition it is taken out of cold storage. To do that you must use salt with the ice and you must have the best hair-felt insulation in the car to retain the cold after you create it in the car and the best information I can get on the cost of a dressed beef car is from $1100.00 to $12-.00.

Q. What do you find to be the life, the average life of the live stock car?

A. About twelve years.

Q. And what is about the average life of the box car?

A. Abo-t 20 years.

Q. Are you able to state the difference in the annual cost of repairs upon stock cars and box cars?

A. That is a very difficult matter. Our books are not kept so far as repairs are concerned, by classes.

Q. State the aggregate amount paid by your company during the year ending June 30th, 1905, as rental for live stock cars?

A. $30,895.86.

Q. On what portion of your system was that?

1147 A. That is just the western lines.

Q. What do you mean by the western lines?

A. The lines between Missouri and Mississippi river. I have confined all of that data to that particular territory. It was $61,000.00, I think on the entire system.

Q. When live cattle and hogs arrive at the markets here in Chicago in less than train load quantities, are the cars containing them carried immediately to the stock yards or are they held until a full train load of cattle and hogs can be obtained?

A. They are invariably sent direct to the yards, but if by holding one train of five or six or eight cars, fifteen or twenty minutes to get another load, we would hold them provided we have got ample time to reach the market.

Q. Are cars containing live cattle and hogs started en route regardless of the number of cars offered, or are they held until full train loads of cattle and hogs can be obtained?

A. They are started on the regular schedule time regardless of the number of cars.

Q. Are any trains of cattle and hogs run special in order to make the markets or are they always run upon some fixed schedule?

A. We have a schedule but on these days when the heavy movements occur, they are run ahead of that schedule and run
1148 special ahead of the schedule in order to get the first train in two or three hours ahead of the schedule time, for the reason that the last train will be that much behind the first one and get it in on it's schedule.

If a stock train is delayed for any reason, our superintendents and

chief despatchers have written authority to run the trains up to a maximum speed of 35 miles per hour in order to make the market.

Q. Are there any other special expenses incident to the transportation of live cattle and hogs, that are not incident to the transportation of their products or even of ordinary dead freight? If so, please state what they are as fully as you can remember.

A. Well, the first proposition of course is the stock cars that are not used for any other purpose. That in handling the stock creates considerable more expense than any other commodity we handle, in the empty haul of the cars. We must clean the cars frequently and at considerable expense.

Q. Can you give us an estimate of what the expense of cleaning cars on your road is?

A. That varies. We can, on different divisions. We estimate that from one dollar, from about thirty cents in summer to about $1.50.

Q. $1.50 at what time of the year?

A. Depending on the season of the year. In winter-time
1149 it costs considerably more. We had an arrangement with the La Salle County Carbon Coal Company, a big coal mine operated at La Salle, Illinois, by Mr. Wyatt, whereby we asked him to load some of these stock cars with coal into Iowa as we were unable at times during the winter to get enough section men to keep our track clean of snow and ice, we ran some stock cars to him in a dirty condition and asked him to employ labor at his mine or put his on-top labor, common labor into cleaning the cars.

His bill for the year was four hundred and some dollars and some of those cars in summer he cleaned for 33 or 34 cents per car, and quite a large number of them that were cleaned in the winter months cost us $6.00 car.

Q. Have you got the voucher?

A. I have got the voucher and we paid it, for that service. His statement reads; "Illinois Central Railroad Company to La Salle Carbon Coal Company, Dr. For actual cost of cleaning stock cars, for shipment of coal." It starts with July 20th, 1903, He cleaned a Street's car and 7 I. C. at an expense of $3.00 for the eight cars or 37 cents per car. He has August, 1903, September, 1903, October, 1903, December 1903 and January, 1904. He cleaned one Canads and two I. C.'s at an expense of $8.00 for the three cars.

1150 Again, January 22nd, the same expense on three cars. On February 10th, he cleaned a Hick's and two Mather stock cars (they are private cars) at an expense of $4.00 per car each. In February, three at $10.00. It gets down to February, four cars for $20.00, all of them foreign cars. On February 21st, he cleaned two at an expense of $12.00, $6.00 per car. On February 23rd, he cleaned three at an expense of 18, or $6.00 per car. February 24th, two at an expense of $8.00. March 3rd, he cleaned two at an expense of $2.00 each. March 10th, he cleaned four at an expense of $10.00, so that it varies according to the season of the year. In winter, of course it is far in excess of the summer cleaning, the cost of the summer cleaning. This voucher is No. 55,504 paid March 5th.

The COURT:

Q. What year?
A. March 5th, 1905.

Mr. BAXTER:

Q. Now, under your contract with that company for the cleaning of those cars, what profit was allowed them over the actual cost of doing the work?

A. Why, it was for the actual cost. His profit is derived in getting the car to load his coal when we are short of coal cars or short of box cars to furnish him.

That mine supplied a considerable local trade in Iowa at
1151 one time and they preferred their coal to be shipped in box cars, or stock cars in order to prevent pilfering of the coal along the line, either by our employés or somebody else as was the case they claimed when it was loaded in the open coal car.

We asked those people and the other mines that had a box car loader and could load coal that way, to use the stock cars that they required and to clean them with their common labor and charge us the cost of it, it being mutual, we got the loading on the car west and made much more money out of it by paying the $6.00 than we would by hauling the car back empty and of course, they made the value of their profit on the coal that they sold and that they would not have sold if we could not have supplied them with cars. So we figured, it was a good bargain even at that cost.

Q. Well, now, proceed with the answer to the question I put to you.

A. Well, the fact that the stock cars moved back west empty to the per cent. that they do, creates nearly double the number of train miles expense that the dead freight creates and about half as much more than the packing house products create.

1152 The locating of stock yards, the cost incurred in building them and maintaining them, sending men to test the scales and adjust the scales, to look after the water supply, the troughs, the flooring and fencing, all that is a heavy expense.

Again, under the last agreement made with our agents and operators, where we call an agent after closing hours, say six or seven P. M., for any purpose, he is allowed 50 cents for that call. If we keep him out more than an hour he is entitled to 25 cents per hour in addition to that. We insist on our agents sealing the stock cars when loaded, and at stations where they load during the night and we do not have a night office, the day man must report and seal the cars.

The time under this United States law, the 28-hour law, is reckoned from the time they load, and we do not want them to load the stock until as near as possible to the train time. We want them to have it loaded before the train reaches there.

The fact that 128 per cent. of our stock moves in winter creates a greater expense than if the commodities moved regularly.

Mr. SEVERANCE:

Q. What per cent.?

A. A hundred and twenty-eight per cent. more move dur-
1153 ing the winter than the summer. That creates an additional expense for the reason that in winter there is a reduction from our rating, from the rating we can haul in summer is about 26 per cent. on our stock trains.

Frequently we run two engines with a snow plow ahead carrying half a train of stock on account of the snow and cold weather. The cold weather has a bad effect on our engines to start with. On stock, local stock picked up, the cars have been standing several days and the oil in the boxes becomes congealed and hard, and the car is still and it requires a five or ten mile good hard run before you get lubrication working freely on that journal and that car hauls much harder in winter than it would in summer.

Again, you have got to shovel snow off your leads to your stock yards in order to let the stock train get back in there to pick up the cars and prevent them running back bucking snow and mashing the end of a car.

Mr. BAXTER:

Q. What do you mean by leads?

A. The side track leading from where it leaves the main track to where the stock car is located. Frequently section men have been called at night to re-shovel the snow out when it has drifted, between five and six o'clock in the afternoon and the time the stock train reaches there.

Again, that Sunday movement of stock, that moves heavily on
Sunday, that is 70 per cent. of the entire movement creates
1154 an expense which I have already explained in reply to another question.

The speed of our stock trains is faster than our *stock* trains and we haul about 10 per cent. or a little more, less tonnage on the stock trains than we can handle on the packing house trains. This is more especially true since the adoption and enforcement of the 28-hour rule.

For example, our time on live stock from any point in that territory must not exceed 27 hours to Hawthorne, allowing them the Junction an hour to put them in. Our time on our trains handling packing house products from Sioux City is from 8 P. M. until 7 A. M., 35 hours, as against 27 hours on the stock. From Omaha it is from 10 P. M. until 7 A. M.

Mr. SEVERANCE:

Q. The second day?

A. The second day, yes, sir. In one instance it is 35 hours and in the other 33 hours as against a 27-hour schedule on the live stock.

Now, the fact again, and it is an important one, that the heavy movement of this stock on Monday has a tendency to reduce the average number of cars we haul in our trains on the other five days of the week and very frequently we are running stock trains on this fast schedule with ten cars and filling them to the maximum of that fast rating, namely, 780 tons, we are with dead freight.

1155 That results in our hauling a low grade commodity at a very expensive speed which that commodity does not pay for, simply because we must handle the ten cars of stock the same as though it were a full train, and on all of these trains handling live stock that are not full trains, the stock handled in them costs us more per ton than if the train was full.

For example, take 10 cars of stock, that is 280 tons on the 780 rating. That gives you 500 gross tons of other freight to put in. That would be about 12 or 13 cars. Now, if it were not for these ten cars of stock, instead of hauling 780 tons we would be hauling 1200 tons of the dead freight, or else not run the train. Consequently the stock handled in less than solid trains of stock is more expensive than when handling in solid trains.

The COURT:

Q. Whether you would be hauling other freight would have to depend upon whether you had it or not to haul?

A. Well, if we did not have the other freight we would not run the train. We would haul it for a solid train or fill in with empty cars.

Mr. BAXTER:

Q. You spoke about the expenses of cleaning your stock cars. What expense are you at in cleaning refrigerator cars?

A. There is no expense connected with that except occa-
1156 sionally on cars containing cabbage and in some instances bananas, the consignees or our agents do not shovel our the refuse in it, and it rots.

The COURT:

Q. Do you carry butter in those refrigerator cars?

A. Yes, sir.

Q. Don't you have to have it unusually clean for butter?

A. We use clean cars for that. When we get a bad car and it is in our business, handling fruits and vegetables, we must clean it ourselves but the packing house cars are cleaned by the packers themselves at their own expense.

Mr. BAXTER:

Q. The refrigerator cars that you speak of cleaning yourselves are cars that you use in transporting bananas and fruits and things of that sort?

A. That is our own traffic, yes, sir.

Q. But the packing house cars are cleaned by the packers?

A. Yes, sir.

The COURT:

Q. You mean cars of your own?

A. Yes, sir.

Q. You clean the cars that you own?

A. Yes, whenever there is a necessity for it. It is not a very frequent occurrence.

Q. You carry packing house products in your own cars?

A. Yes, sir.

1157 Mr. BAXTER:

Q. Well, who cleans them?

A. The packer would not take a car that was not in fit condition.

Q. Then you clean them yourselves?

A. We would have to clean that ourselves for our own fruit business.

Q. Well, now, how about the box car?

A. The shipper, as a rule, cleans them. He invariably cleans them.

Q. The live stock on your road, does it originate at divisional points or on branches or where?

A. Well, both. There is some little originates at the ends of the districts or divisional points, but we have had very little out of the Missouri River points, that is, Sioux City, Onawa or Omaha. We had 111 cars, I think, out of some 9900 from Omaha during the year of 1905. It mostly originates at local stations or junction points in competition with other roads, interior points.

Q. Do you ever at any time have to run light engines west to get your live stock?

A. We frequently do if on this particular day, Monday or Sunday, run trains west, for instance, on the Sioux Falls District. If we have a heavy train of live stock, exceptional cases that would originate at one or two points, we would run the engine half way from the division point to a turning point or "Y" turn the engine and come back and pick the stock up, but it is very seldom that we do

1158 that. We generally start from the ends of the districts.

There is another item in that expense, of course, the bunk cars. We use the same kind of caboose cars that the other roads do, but that is not much of an expense.

Q. Do you mean that they are ordinary cabooses?

A. No, they are drovers' caboose cars, blankets and mattresses and pillows.

Q. Do you furnish any free transportation on your road to the shippers of live stock?

A. Yes, we furnish return transportation under the rules agreed upon on their bills of lading. I think it is one man with two cars, but I am not positive on the amount. We furnished some 3500 of such transportation last year.

Q. Estimating them at your passenger fare rate back from Chicago to the points of origin, can you state what amount that would represent?

A. Take just the return passage of the men in charge whom we have furnished free transportation to from Chicago to their home or to the junction point where they leave our line—explaining that, we get some stock from the M. & St. L. and some from the Des

Moines, Iowa Falls & Northern, and of course we give free transportation back to those junction points and to our own local stations, where the stock originates, for the year ending June 30, 1903, it cost us $41,423.74.

1159 I was obliged to take the year 1903 for the reason that when these passes or tickets are returned by the conductors on our passenger trains that take them up, they go to the Auditor of passenger receipts and he transmits them to the Auditor of Freight Receipts in order that he may examine the billing from the station where the man was returned and verifies it, that that is the particular shipper who shipped the two or three or whatever cars were claimed for on this return pass. On the return ticket we show the initials and numbers of the cars of stock which the man came with and we have them verified with that and this transportation for the year 1905 is scattered throughout the office. Some is in the Traffic Manager's office and some in the Auditor of Freight Receipts' office, and we could not get it together and consequently I took 1903.

During the period, January 1st to about April 1st, 1904, we did not issue any return transportation to the stock men, and consequently that would not be a fair average year, but 1903 is a fair average year in the shipments.

Q. How much did you say you had paid in damages and for injuries to those persons who were travelling with the stock?

A. $9,974. That is per annum for five years. Some years you have very little and other years you have considerable misfortune.

1160 Q. Are any attendants allowed free transportation with your packing house trains or your ordinary dead freight trains?

A. Not that I know of, no, sir.

Q. Is the cost of bedding the live stock borne by your company or by the shipper?

A. We furnish the sand and the shippers do their own bedding, but we furnish it free.

The COURT:

Q. Furnish the sand?

A. Yes, sir.

Q. You don't furnish anything else?

A. No, sir. Well, there are some cinders, some of the stock men who now use cinders.

Q. You don't furnish straw or hay?

A. No, sir. Some of them use cinders in preference to sand. The hogs will eat the cinders so the train men tell me. It is to prevent the cattle from slipping with the motion of the train.

Q. They put straw on top over that, don't they?

A. No, a great many of them prefer to use the sand and some the cinders.

Mr. BAXTER:

Q. What does that sand cost?

A. We figure about 60 cents per car for loading and hauling it there and unloading it at the different yards.

Q. That is the cost to the company of furnishing the sand?

A. Yes, sir, about 60 cents per car.

1161 Q. Do you have to furnish anything of that sort with packing house products and ordinary dead freight?

A. No, sir.

Q. I believe none of your cars on your western lines have to be disinfected?

A. No, sir, very seldom that we have any disinfecting to do.

Q. What was the size and capacity of your tonnage in live stock cars in 1888, and what is the size and tonnage capacity of your present live stock cars?

A. In 1888 we had 840 fourteen-ton cars, 30 foot, I think they were. We had a total then of 1098, I think it is. Today we have got 1087 and 800 and some of those are six-foot cars, 30-ton capacity. Our total tonnage capacity of our present equipment is 30,000 tons as compared with 17,000 tons capaciy in 1888 or an increase of about 78 per cent. in the loading capacity of the cars today as against that time.

Q. You mean that is the aggregate?

A. Yes, sir.

Q. The difference in the aggregate tonnage capacity?

A. Yes. We have no 14-ton cars today at all. They are all out of existence.

Q. When your movement of live stock and hogs eastward is the heaviest, in what direction is the movement of your other freight heaviest?

A. East bound.

1162 Q. When the movement of your cattle and hogs eastward is the heaviest, do you handle them with your ordinary force or do you have to employ extra men, or how do you run that?

A. We handle them with the regularly assigned and employed force, but we frequently keep our day men, quite a number of them, up nights, such as travelling engineers and round-house foremen and men connected with the taking care of the machinery and motive power, and we will call an agent, of course, if we require him, or an operator, to stay on nights, in order to block the trains apart and pay him over time for it, but we don't hire any outside help.

Q. In your experience how does the cost of the transportation of live cattle and live hogs per revenue ton all conditions considered, compare with the cost of transportation of the dressed or prepared products of cattle or hogs, per revenue ton?

A. As far as I can figure it out, taking into consideration the light tonnage loaded in cars of live stock, and the heavier tonnage loaded in cars of packing house products; taking into consideration the use of the cars in both directions, largely, of the packing house products, as against one direction of the stock,—in other words, the one mile revenue received from handling the stock must be

considered in connection with a two-mile train service necessary in returning the stock cars.

1163 Q. You mean returning the stock cars?

A. Yes, sir, the stock cars empty. Whereas, with the packing house product it is one-half that amount. An engine can haul nearly as many cars loaded with 15 tons in the car as it can with 10 tons. The cost per ton is not gauged by the ton. It is by the quantity in the car and the best figures I can get show that the present rate of 20 cents on packing house product, as against 23½ on live stock, I would prefer the packing product by 30 per cent. under our present conditions.

The COURT:

Q. Thirty per cent. on what?

A. I think the packing house products give us 30 per cent. more revenue than the live stock, taking into consideration the switching charges that we pay to the packers at the Missouri River, Sioux City and Omaha; taking $10 cost on the refrigerator for mileage; take the $3 cost from here to the Junction railway, getting rid of the packing house stuff, and so forth; take the $1.16 claims for damages, average per car for damage to the packing house product, and deducting that from the amount received per car at the 20 cent rate. Then take the live stock, the cost of your yards and the cost of your facilities for taking care of it, the cost of returning the men both in coaches and sleeping cars, the claims and the fixed

1164 charges connected with it, and you have got more revenue to apply on the transporting of the product of packing houses than you have on the live stock, considerably more. I should say 30 per cent. more.

Q. You mean the rate on live stock ought to be about 30 cents instead of 23½?

A. I am figuring that way, yes, sir.

Q. And upon dressed beef 15 or 16?

A. Either one. Not dressed beef, though. I would put dressed beef with the stock. It loads light in the car. I base it entirely on what it costs to handle a ton, and that depends on how many tons you put in a car, and I think that dressed beef is not much better than the live stock.

Q. What are you comparing with, packing house products?

A. Packing house products with the dressed beef mixed in give us this profit, and it would be greater if we did not handle any dressed beef.

Q. In your experience how does the cost of the transportation of ordinary dead freight, all conditions considered, compare with the cost of transporting live cattle or hogs?

A. On these western lines we haul about 174 per cent. of dead freight per train mile more than we do revenue tons of live stock.

Q. How does the incidental expense compare?

A. Well, they are away less. We have what you might

1165 call no fixed charges such as facilities, in dead freight. In merchandise we have got to maintain freight houses at an

enormous expense, but as I understand it the rates on that are much higher; but grain and lumber and coal—of course we don't originate any coal out there—but grain and hay, the shipper owns the elevator and the facilities for loading the cars. The hay is loaded largely at hay houses or by teams at the track and there are no facilities there.

Q. Take some two months in the year ending June 20, 1905, during the heavy movement of cattle and hogs on your road, and another two months in the same year during the heavy movement of other commodities on your road, but when cattle and hogs were not moved heavily or not moved at all, and state the gross earnings and expense of conducting transportation on your road, and the percentage which the expenses bore to the earnings for each of said periods.

A. I have not got that data. I can get that. On one division, it was, I think, from Fort Dodge to Waterloo, was 41 per cent. in the summer and 46 per cent. in the winter. On the Freeport division I think it was something like 53 per cent. in summer and 60 per cent. in winter. I would prefer, though, to get the actual figures, if you will permit me on that. I don't wish to be quoted on that, but I think that is about the figures.

1166 The COURT:

Q. Do you think that the dressed meat and the live stock rate should be about the same?

A. I would figure nearly the same expense. One may be a little higher but it looks that way to me. It is from the transportation standpoint of hauling that we get about the same quantity in each car, and that is one large item in the transportation expense. I see, though, in that where the Operating Department would be called upon to increase our expense. I think it would be almost compulsory that we assign men at the packing houses to watch our freight to see whether it was dressed beef or packing house product or otherwise.

Q. The rates would be different?

A. The rates would be different, and then they would bill, possibly, dressed beef as packing house and get a lower rate on it unless we had inspectors to watch it.

Q. What do you understand packing house products to cover?

A. It covers lard and hair and all the commodities except practically fertilizer.

Q. Whether it comes from the live hog or the live steer?

A. Yes. They have some twenty items, I think, in the classification. I went through it to determine what that was. Lard is one that loads very bulky. We have got 40,000 pounds frequently in cars. In one instance, we had one instance where we found
1167 some 30 I. C. ventilated fruit cars loaded with lard from South Omaha, I think the billing showed "Cairo or south," in open ventilated fruit cars, that is like a stock car, not a refrigerator car at all. It loaded in a number of them as high as 37,000 pounds, 38,000

pounds at certain times. Other times they loaded down to 26,000 pounds and 22,500, and so on.

Mr. BAXTER:

Q. Are there any packing houses located at stations on your road between the Missouri River and Chicago?

A. We have the South Omaha and Sioux City packing houses, the Cedar Rapids packing house and a small one at Waterloo.

Q. Waterloo, Iowa?

A. Yes, sir.

Q. State the number of cars of dressed and prepared products of hogs received by your company during the year ending June 30, 1905, from packing houses located at those stations on your road, between St. Paul and the Missouri River on the one hand, and Chicago on the other?

A. The number of cars of packing house products?

Q. Yes.

A. About 3100.

Q. How many of those were destined to Chicago?

A. 336.

Q. Where did the remainder of them go?

A. They go south into Mississippi and Louisiana, and some of them for export by way of New Orleans. Quite a little of it
1168 goes southeast by the M. C. & St. L. at Martin. Some of it goes to Vicksburg, Memphis and local stations on our southern lines. Some little to Illinois points on our Amboy division.

Q. State what proportion of the live cattle and hogs carried by your road to Chicago is carried in through trains from St. Paul or Missouri River points, and what proportion is picked up at intermediate stations?

A. As I said, we had only 111 cars out of 9900, about 8/100 of one per cent. originating at the Missouri River points. The balance, 99/100 per cent. originates at local stations or comes from connecting lines in the State of Iowa.

Q. Have you any branch lines on your system?

A. Yes, we have got the Onawa branch, the Sioux Falls branch, the Albert Lea branch and the Cedar Rapids branch.

Q. How do you gather up the stock that originates on those branches?

A. We start independent trains out on the branches to come down to the main line and meet on about the time of our stock train schedule, and frequently that is during the night when, of course, our way-freight train cannot handle it. If the way-freight train can handle the business they would handle it, but invariably the
1169 schedule is such that it cannot be done that way.

Q. Do you mean the way-freight train would go up there on those branches?

A. No, no, the way-freight that operates on the branch. It must leave the ends of the districts at given times in the morning in order to peddle their merchandise out at these different stations, but if the

stock train passes the point along about midnight, the way-freight could not do the work. We have to run independent stock trains to meet our main line stock train at the junction.

Q. State the manner in which trains are handled that pick up the live stock at intermediate stations? State the time consumed by such trains and the average number of live cattle and hogs contained in such trains.

A. That depends entirely on the season. In summer time when conditions are all favorable, a train can drop into a station where the station is on the level grade and get out in ten or fifteen minutes and pick up a car or two of stock.

In winter time it will take a good deal longer, for the reason that the shipper cannot, as a rule, in winter pinch the loaded car by the chute when he loads it on account of the condition of the car being frozen and stiff.

Q. Explain what you mean by "pinching" the car.

A. Taking a pinch bar and putting it between the wheel
1170 and the rail and pinching it by, so as to pinch the car up in position and have them both ready when the train comes. So in the winter it takes longer, but I don't think that that of itself is a very important point. I have not gone into that very carefully at all.

Q. What is the average speed of the through train which carries the dressed or prepared products of cattle and hogs from St. Paul and Missouri River points to Chicago, and what is the average tonnage of the train which pick up live cattle and hogs between St. Paul and Missouri River points on the one hand and Chicago on the other?

A. The through speed of our through trains that handle packing house products, you say?

Q. Yes, sir.

A. That is about 16 miles per hour. That means through from the Missouri River to Chicago. It does not mean the time between stations. That will vary according to the physical condition of the property. For instance, on uphills, where there is a heavy grade, they may get down to six or eight miles an hour, and then, down hill, they may run 30 or 35 miles and at some times 40 miles per hour, but it is safe to say that the train schedule through from the Missouri River at 16 miles per hour, will run an average of 22 miles an hour between stations.

A stock train scheduled at 19 miles per hour stops to pick
1171 up stuff, that train would make over 30 miles per hour, for the reason that the through train of packing house or stock either would only stop for water probably three times, and the other train must make more stops, the same stops for water and in addition to that must stop several times to pick up stock. Consequently, they have more standing time, considerably with the stock train, the pick-up train, than the other.

Q. Have you prepared a statement showing the name of all your stations on that portion of your road which lies between St. Paul and

Missouri River points on the one hand, and Chicago on the other, at which stock yards or stock pens are located, showing also the cost of constructing such stock yards or pens, and the cost of the maintenance and operation of them? If so, file it as an exhibit to your testimony.

A. Yes, sir.

1172 Mr. BAXTER:

Q. Did I ask you what is the actual annual cost per car for keeping live stock cars in repair on your system?

A. You did, but I cannot answer on account of not keeping the account separate between the stock and the box cars.

Mr. COWAN: I did not understand that last question.

Mr. BAXTER: That was the number of stock yards, where located and what they cost.

The WITNESS: The exhibit referred to shows 125 stock yards, the cost of construction of each, the value of the ground, and the annual cost of maintenance of each yard.

(The document referred to by the witness was marked "Daly's Exhibit 1," and filed with the court as a part of his testimony.)

1172*a* DALY EXHIBIT NO. 1.

Illinois Central Railroad Company.

Statement Showing Location of Stock Pens at Stations on Illinois Central R. R. Between Dubuque, Iowa, and Missouri River, Cost of Construction, Value of the Grounds, and Annual Cost of Maintenance at Each Station.

Location.	Construction.	Value of ground.	Annual cost of maintenance.
Dubuque, Ia	$3000.00	$500.00	$150.00
Peosta	1125.00	150.00	65.00
Epworth	1110.00	150.00	75.00
Farley	1915.00	225.00	100.00
Dyersville	965.00	175.00	75.00
Manchester	2650.00	350.00	200.00
Masonville	1015.00	150.00	65.00
Winthrop	3025.00	225.00	125.00
Doris	1145.00	150.00	40.00
Carried forward	$15950.00	$2075.00	$895.00

1172b

Location.	Cost of construction.	Value of ground.	Annual cost of maintenance.
Brought forward....	$15950.00	$2075.00	$895.00
Independence, Ia.....	2476.00	300.00	170.00
Jesup.....	1850.00	200.00	150.00
Raymond.....	575.00	175.00	35.00
Waterloo.....	1875.00	1000.00	50.00
Ryan	1210.00	175.00	75.00
Ehler	1125.00	175.00	75.00
Coggon..	1155 00	225.00	100.00
Central City.....	1250.00	250.00	75.00
Alburnett	1110.00	200.00	75.00
Robins.....	572.00	175.00	56.00
Janesville	1767.00	225.00	75.00
Plainfield.	1765.00	250.00	100.00
Waverly.....	425.00	175.00	25.00
Nashua	1675.00	250.00	125.00
Carrville	425.00	100.00	25.00
Charles City.....	2750.00	500.00	150.00
Floyd	1700.00	200.00	100.00
Orchard.....	1830.00	250.00	100.00
Osage	3010.00	300.00	200.00
Mitchell	1965.00	225 00	100.00
St. Ansgar.....	2530.00	300.00	150.00
Lyle, Minn.....	915.00	200.00	75.00
London	2085.00	250.00	100.00
Myrtle	1785 00	200.00	100.00
Glenville.	1245.00	200.00	100.00
Toeterville, Ia.....	1245 00	200.00	75 00
Stacyville	2190.00	300.00	150.00
Cedar Falls.....	1280.00	1500.00	72.84
Benson.....	865.00	75.00	36.42
New Hartford.....	1415.00	500.00	48.56
Sinclair	885.00	60.00	36.42
Parkersburg	1565.00	700.00	84.98
Aplington.....	1335.00	500.00	60.70
Austinville	1190.00	400.00	60.70
Ackley.....	1050.00	2000.00	60.70
Macy.	585.00	50.00	24.28
Iowa Falls.....	2490.00	600.00	121.40
Sunnyside.....	150.00	30.00	12.14
Wilke.....	1200.00	60.00	60.70
Alden.....	1225.00	75.00	60.70
Williams.	1325.00	350.00	72.84
Blairsburg.....	1040.00	200.00	48.56
Reinicker..	40.00	5.00	4.00
Webster City...	1725.00	2200.00	84.98
Highview.	555.00	150.00	24.28
Duncombe.....	800.00	200.00	36.42
Judd..... ..	715.00	150.00	60.70
Ft. Dodge	740.00	1500.00	48.56

Location.	Cost of construction.	Value of ground.	Annual cost of maintenance.
Wadleigh	$575.00	$75.00	$36.42
Knierim	835.00	100.00	48.56
Richards	985.00	125.00	72.84
Rockwell City	1350.00	325.00	72.84
Sherwood	1085.00	200.00	72.84
Yetter	1180.00	150.00	97.12
Ulmer	1030.00	175.00	60.70
Wall Lake	1370.00	200.00	72.84
Brogan	725.00	125.00	48.56
Ells	1680.00	125.00	72.84
Deloit	1890.00	250.00	72.84
Denison	2225.00	600.00	97.12
Arion	1205.00	500.00	48.56
Dow City	1800.00	300.00	84.98
Dunlap	3935.00	400.00	157.82
Woodbine	1770.00	250.00	72.84
Logan	1550.00	200.00	60.70
Rode	1380.00	125.00	84.98
Grable	1025.00	100.00	49.56
Ascot	330.00	35.00	24.28
Clara	110.00	25.00	12.14
Carried forward	$108665.00	$24765.00	$6048.26

1172c

Brought forward	$108665.00	$24765.00	$6048.26
Tara, Ia	150.00	500.00	80.00
Barnum	450.00	700.00	120.00
Manson	600.00	1500.00	210.00
Pomeroy	750.00	2000.00	225.00
Fonda	865.00	2000.00	225.00
Cora	415.00	500.00	135.00
Newell	750.00	2500.00	225.00
Sulphur Springs	450.00	500.00	135.00
Storm Lake	865.00	2500.00	225.00
Alta	1015.00	2500.00	240.00
Aurelia	1050.00	2000.00	280.00
Cherokee	1015.00	2500.00	280.00
Meriden	450.00	2000.00	170.00
Cleghorn	565.00	1500.00	170.00
Marcus	1315.00	2500.00	320.00
Remsen	865.00	2500.00	250.00
Oyens	715.00	1200.00	185.00
Le Mars	1050.00	3500.00	305.00
Merrill	715.00	2000.00	310.00
Hinton	300.00	1500.00	130.00
James	150.00	1000.00	90.00
Leeds	300.00	600.00	105.00
Onawa	900.00	2500.00	190.00

Location.	Cost of construction.	Value of ground.	Annual cost of maintenance.
Kennebec	$300.00	$300.00	$90.00
Ticonic	415.00	300.00	110.00
Smithland	600.00	500.00	140.00
Oto	865.00	1500.00	250.00
Anthon	1165.00	2000.00	355.00
Correctionville	1015.00	2500.00	215.00
Washta	865.00	2500.00	275.00
Quimby	1015.00	2500.00	290.00
Larrabee	715.00	1500.00	185.00
Calumet	600.00	1000.00	185.00
Primghar	715.00	2500.00	210.00
Archer	450.00	1200.00	170.00
Sheldon	750 00	3000.00	250.00
Matlock	415.00	1000.00	155.00
George	600.00	3000.00	235.00
Edna	415.00	1000.00	155.00
Hunts Siding	300.00	500.00	55.00
Rock Rapids	450.00	3000.00	245.00
Steen, Minn.	300.00	1000.00	155.00
Hills	300.00	1000.00	130.00
Bruce	300.00	600.00	105.00
Ben Clare, S. D.	400.00	600.00	130.00
Rowena	450.00	1000.00	145.00
Sioux Falls	300.00	3000.00	180.00
Total	$138065.00	$102265.00	$15068.26

Mr. BAXTER:

Q. Mr. Daly, do you compile in your office the statistics which appear in the annual report of your Company to the Interstate Commerce Commission, showing the train mileage, and the number of loaded and empty cars hauled per train mile?

A. Yes sir, I do.

Q. Does your Company in said report furnish a statement showing the average number of loaded cars per train mile, average number of tons of freight per train mile for that portion of your
1173 Road known as your Northern and Western Lines?

A. To the Interstate Commerce Commission?

Q. Yes sir.

A. Yes sir, we do.

Q. In the printed form of annual report furnished your Company by the Interstate Commerce Commission to make up your reports upon, do they define what constitutes a freight train mile, if so, state what their definition is?

A. The Interstate Commerce Commission furnish the railroads with books, *rp*inted books, each question numbered and instructions as to how to answer the questions on the opposite pages, and with reference to question No. 37 "Average number of loaded cars per

train mile" they star it to refer to their definitions. Their definition reads as follows: "Freight train mileage embraces the mileage of trains run to transport revenue earnings freight which do not regularly include a car or cars devoted exclusively or principally to revenue passenger business, and also the mileage of trains consisting of empty cars, and of trains consisting of a locomotive and a caboose, running light between terminal stations, on account of the greater tonnage being in one direction." That constitutes what the railroads term and the Interstate Commerce Commission term a train mile.

Q. So that the train mile shown by a company in its annual report to the Commission would include the mileage made by a locomotive with an empty caboose?

1174 A. Just the same as though it had a train load of revenue paying freight.

Q. Would it appear the same as a train would if it had fifty cars?

A. Yes sir, an equal amount of train mileage to be divided into the loaded cars and into the loaded tonnage, revenue tonnage.

Q. Well, in counting up the train mileage, do you count up the miles made by empty cars going back?

A. No, the empty cars themselves cut no figure.

Q. Well, I mean a train of empty cars would show the same train mileage as a train of loaded cars?

A. Yes sir, the same train mileage.

The COURT: Regardless of how many cars there were to it?

A. Yes sir.

Q. On account of what the engine does?

A. The miles the engine makes is practically the train mileage.

Mr. BAXTER: Please refer to the report prepared by your company for the Interstate Commerce Commission, for the year ending June 30, 1905, and state the average number of loaded cars per ton mile of all revenue from freight, including packing house products, and live cattle and hogs carried over the Northern and Western Lines of your Road as shown by said report?

A. The number of tons was 334.98 per train mile. That

1175 is revenue tons hauled per train mile.

Mr COWAN: What year?

A. That is for the year ending June 30, 1905, as submitted to the Interstate Commerce Commission.

Mr. BAXTER:

Q. Has that report been sent on yet?

A. I think it has. I saw the controller Friday or Saturday, when I got the figures and it was all complete, had been approved and I think had gone to Washington. It will appear, at least the figures will appear in that report. There will be no change in it.

Q. State *what* the average number of loaded cars per train mile of packing house products, and the average number of loaded cars of cattle and hogs carried over your system between the Missouri River and Chicago during the same year?

A. The average number of loaded cars per train on live cattle was 15.

Q. Do you mean per train or per train mile?

A. Per train mile 15, and on packing house products was 16.20 loaded cars per train mile. The tonnage of the live stock, the average number of tons or revenue paying live cattle and hogs was 150 tons per train mile, the revenue paying tons per train mile of meat and packing house products was 227 revenue tons per train
1176 mile; but the figures showing the stock in the packing house do not appear se-rately in this Interstate Commerce report for the reason they do not ask for it. The figures are arrived at, however, the basis that we arrive at the average figures of all tonnage, and this 334.98 includes coal, lumber, merchandise, bananas, cattle and all revenue commodities handled.

Q. Refer to your said report and state the average number tons of freight per train mile of all revenue freight including all packing house products carried over the Northern and Western Lines of your Company as shown by that report?

A. 334.98.

Q. State *what* the average number of tons of freight per train mile of packing house products and live cattle and hogs carried over your system between Missouri River and Chicago, during the same year?

A. The fresh meat and packing house product 227 revenue tons per train mile, and on live stock, live cattle and hogs was 150 revenue tons per train mile.

Q. Explain what the figures you have just given indicate?

A. It, of course, indicates that the aver-ge ton per train mile on any system cannot be intelligently used in determining *what* one commodity as compared with another or the earnings of one
1177 commodity as compared with another. That can only be determined by taking that particular part of the line over which it moves and in the direction it moves, and take the commodities by themselves apart from all other commodities. For example, our annual report includes the entire system from Sioux Falls, and from Sioux City to New Orleans. South of the river we handle those carloads of big cotton.

Q. What river do you mean?

A. South of the Ohio River, what they term big cotton or unpressed cotton. It loads about 26 or 28 bales to the car, and 500 pounds to the bale, and 13 to 14 thousand pounds, that is revenue loaded car miles for every mile you move it. A car of compressed cotton will load 50 to 60 bales of cotton to the car and weigh*t* twice as much. A car of coal will run about 37½ tons per car. Now, if you handle enough coal you smother the low average of the cotton and show a big average. Now, if the cotton men undertake, cotton shippers undertake to claim that their rates are too high because you are hauling an average of 300 tons and your annual report shows it, then you would have to go to all the work of explaining to them that that includes lumber, coal and everything else; and the annual report as a basis of determining the cost of any one commodity is the most misleading article that could possibly be

taken. I don't know what our show, what our average earn-
1178 ings per train mile shows in it. It is entirely useless as determin-g the cost or earnings of any special commodity.

Q. Well, is there any other statistical facts contained in your annual report to the Interstate Commerce Commission that can be used for the purpose of ascertaining the reasonableness of a rate, and if so, what one is it?

A. I don't know of any, and there are so many conditions affecting the movement of traffic, winter and summer, and the value of your railroad for instance, moving freight through tunnels and over mountains is more expensive per ton mile to the railroad than to move it in Kansas or on a prairie road, in a prairie State. Again if you have got to contend with heavy water-sheds, if you are built crossing streams, instead of going with them, your cost of maintenance for washouts, the same as south of the river with us, is enormous. That all must enter into the question of determining what is reasonable for the cost of operation or handling a commodity. Therefore, the location in which the commodity is handled must be considered always, and the commodity can be considered one with the other in determining which is the best, which pays the most, the same as the truck man here in Chicago. If he gets a truck load of lard from Sout- Water Street to 12th Street freight house, and in return he gets a truck load of something else
1179 back, he can afford to handle*d* that cheaper per ton or per hundred, than if he was handling millinery goods or dry goods that load one-half or one-fourth as much per car and require only the same time of his driver and his team to transport it. It must be localized; you can compare one against the other, but the cost of any one is a difficult proposition, I don't want to try it.

The COURT: What do you think is the way of fixing the comparative rates of the finished products and the raw material under the Interstate Commerce Law which says you shall not discriminate against localities or different kinds of traffic?

A. I figure this, that all commodities so far as possible should bear their equal portion of expense of handling them plus the dividend on your investment. Take the United States mail. If you furnish them a mail car for post office, they ought to pay for it, pay their portion of what it costs to handle it, plus enough to create a sinking fund or dividend on an investment the same as any dealer would. For instance a wholesaler gets in a carload of sugar. He figures the cost of teaming that sugar from the freight house to his store and the cost of teaming it back first as a fixed item, then a ligitimate profit on that. Now, his same per cent. of profit should exist on every commodity, and a greater per
1180 cent. of profit on his perishable stuff that is liable to decay on his hands and be a loss, he has got to figure that up, and every item should be brought in so as to as nearly as possible bring all on an equality, that would be the idea of it.

The COURT: Do you think that railroads ought to consider the desire to build up business in certain sections at the expense of another section?

A. Not unless they have endeavored to build a section and find it impossible and that by starting another one they would benefit a greater number of people, and a greater community than by trying to continue to build up something that appears impossible or impracticable?

Q. You think then with Mr. Stickney, it is a proper way to figure this out mathematically at what it would cost, and charge a fair profit on what it would cost?

A. I candidly believe that it is fair to charge the stock men sufficient to make twenty per cent. profit on their cattle, and let the packing house men get off with five per cent., or charge the packing house people enough to make twenty per cent. profit, and let the stock men get off with a loss to us, or five cent. It ought to be the same as any ligitimate, fair business, to equalize as far as possible. That is a problem I have heard traffic men talk
1181 a great many times, of arriving at that ideal system, and how to do it.

Q. The difficulty, I suppose, Mr. Daly, is that nobody has ever been able yet to ascertain the cost of transporting any particular commodity between any two points?

A. I thought I did at one time, but Mr. E. T. Jeffery showed me in about thirty minutes that I didn't know where I was at, and I have not tried it since.

Q. Do you know of anybody else who has done it?

A. I have heard it discussed in meetings, and at that time I took up my correspondence with several general superintendents and managers and I saw from their replies that they did not consider my request seriously at all.

The COURT: Well, if you cannot do that, how are you going to fix the rate then?

A. Well, it is more than I can tell.

Q. Let the railroads under this law change the rate whenever they want to?

A. I think that the competition, that is the traffic people and their operating departments, each watching the direction of their empty mileage and gathering up traffic to load them back and make it pay creates a reduction in the rates. One road that is favorably situated creates a condition that forces the other to come to it, and in the end they get within a reasonable extent of basing their rate, of getting the rates on that basis of equity.

1182 Q. In other words, how are you going to determine what is discrimination between localities and traffic if you do not fix it upon what it costs to the carriers?

A. I could not state on that.

Cross-examination by Mr. COWAN:

Q. Mr. Daly, what is a standard of reasonableness in a rate used by the rate making representatives of railroads if you know?

A. I don't know, I have not been connected with that except in frequent conferences with our traffic managers in connection with our empty mileage, which direction our coal cars are moving, our box

cars or other traffic, and he of his own accord fixes the rates. I have never had anything to do with it, and don't know now how they base it.

The COURT: Who do you say settles the rate for your Road?

A. The traffic manager.

Q. What is his name?

A. T. J. Hudson. For instance if a large shipment of granite block, I remember one case of that that came up from Sioux Falls, and we handled it in coal cars, and he asked in what direction we were moving coal cars. Well, we were moving them east. That
1183 permitted us to name them a favorable rate on it, a much more favorable, I presume, than if we had had to haul the coal cars back. It is circumstances of that kind that they use in connection with it.

Mr. COWAN: You say that you think they reach in making tariffs, about a proper basis?

A. I think one forces the other down to that, yes sir. If any one sees anything—I would consider that the competition between railroads and the alertness of the traffic people of the different railroads to distribute one traffic against another encourages them to reduce the higher earning commodities a little in order to get an advantage from it and in that way they bring them all to a reasonable basis.

Q. Where a rate is charged on one commodity by a system of giving rebates to a rate below the rate on another commodity, do you think that is one of the means of reaching a proper basis or not?

A. No, I don't know anything in connection with that feature. The only point I am testifying to is that as affecting all other classes of business as well as the railroad business, and I am not an expert on traffic. I know very little about the rates on any commodity except what I have heard, and what I had to pick out on these two commodities, and some on other commodities that I am now
1184 investigating on a similar line.

Q. You would have an opportunity to get hold of the annual report, a copy of it that you made to the Commission in your office, to bring down, would you not?

A. Do you mean a copy of this?

Q. No, I mean the full report?

A. For the entire Road?

Q. Yes.

A. You see we report for the Interstate Commerce Commission dividing our system into divisions. We also report to every State Commission by District. Now, we have a full report, the report I furnished you yesterday is our annual report for 1902, 1903, and 1904. 1905 is not out yet, and that is the report that we base from.

Q. That is the whole Road?

A. That is the whole Road, yes sir.

Q. Now, you have a separate report on this division from Chicago west?

A. Not an annual report, nor our own annual report, we make a separate report to the Interstate Commerce Commission covering it.

Q. Your auditor has a copy of that?

A. I think he has, yes.
Q. I wish you would bring that particular one down, please?
A. Yes sir.

Q. Now, Mr. Daly, you say that in determining what the
1185 revenue is per train mile what the earnings are you want to take divisions or should take divisions of the Road instead of taking the whole system?

A. In determining the cost or the earnings of a commodity, the line over which it moves, and which is in controver-y is the only correct basis of determining.
Q. Yes sir.
A. If it is possible to get that information.
Q. But isn't it a fact that in most cases the reports are not made by divisions, but are made for the whole Road so that the public does not have the advantage of those reports, except for the whole system?
A. Yes sir, that is a fact too that the annual report includes the entire system.
Q. How much is the average earning per ton per mile on your revenue freight moving on this western division, do you recall?
A. I can't tell. That would include both east and west bound and I have not got the figures at all on that.
Q. Now, isn't it a fact that the rate of freight that produces the earnings so far as profits is concerned will depend as much on the west bound business as it does the east bound business?
A. The rate of freight you say?

Q. Yes sir, the profit that the rate of freight will produce
1186 depends as much upon the west bound business as it does the east bound.

A. Well, if you get a loaded movement on your car in both directions, your profits are much greater than if you got it in one direction. Your profits are much greater than if you got it only in one direction, certainly.
Q. And if you get a load for engines and cars in both directions whether it was the same cars or not, you get the revenue?
A. You get a loaded revenue movement.
Q. That is what I am talking about.
A. Yes sir, it is more profitable, certainly.
Q. The greater the density of traffic on the line the greater profit in the particular units of that traffic, is not that true?
A. The greater the density of traffic in each direction equalizing it, the greater the profit would be.
Q. And the greater the density of traffic whether it was in each direction or not?
A. No, I didn't say that.
Q. That would be the case, would it not?
A. No, I don't agree with you on that. If your traffic moves all in one direction on one part of your system, and is equalized moving in both directions on another, the grades being the same and your ability to haul the same number of tons on each, give me the
1187 one that you have the loaded mileage in both directions as the most profitable.

Q. No doubt. But suppose you have 500,000 tons per mile moving in one direction on one division of road, and you have got twice that much——

A. A million tons.

Q. A million tons per mile of road, moving the same direction, the road that has got the greatest density of traffic will carry that at a less cost per unit of traffic that is per car or per ton, will it not?

A. The same commodities?

Q. Yes.

A. That would depend on whether he filled out all your trains or not. If you had that 500,000 pounds, enough traffic to keep all your trains filled out to the maximum rating, and the same empty return mileage, then on the million tons division you had enough to keep all your trains filled out, then it would be about the same.

Q. There are certain expenses that must go on, that is keeping station agents and so forth?

A. There are certain fixed charges for general supervision, general office work but they are increased in proportion—not in proportion as traffic increases, but to an extent they increase with it.

Q. Isn't it a fact that the maintenance of way and structures, general expenses, and practically all of the items of both are
1188 not so much dependent upon the amount of tonnage you haul, whether you have three or four trains over the road a day, or haul six or eight trains, the difference in cost of maintaining your structures, and maintaining your agents and telegraph operations will not be materially different, will it?

A. The more trains you operate, Mr. Cowan, the more agents and operators you must keep on night and day to move these trains with dispatch on single track roads.

Q. But in proportion to the number of trains?

A. I don't think it would after you reach a certain number of trains. Then it does not increase, of course, to any extent at all. If for instance, you are running twenty trains, and it requires an agent at every station and a night operator at every other station, and then you increase to thirty, you can handle them just the same as twenty.

Q. The general office expenses are the same whether you are handling a greater or less tonnage?

A. Oh, no, no. With us we move, say, 40,000 cars a day. Those 40,000 entries must be made. If we increase it to sixty thousand we have got to hire enough help to enter the additional twenty thousand movement. The same is true of the auditor of freight receipts.

Q. Do they increase in proportion?

A. Practically, so far as our departments are concerned, the number of men increases.

1189 Q. Mr. Daly, you have furnished three printed annual reports of the Illinois Central. They contain correct tabulated data with respect to the operating department, traffic departments, and other departments so far as it contains it at all, does it not?

A. In what, in dollars and cents?
Q. Whatever the report contains is correct, is it not?
A. Well, it is correct as showing an average.
Q. Well, whatever the figures show, it is not a false statement, it is deemed a correct statement?
A. No, the figures show what they state, the average for instance, in loaded cars moved, it shows the average on the entire system.
Q. Well, what I want to get at, is whether this annual report of your Road is regarded as a correct statement?
A. Yes sir, it is.
Q. As to whatever matters are therein contained?
A. Yes sir.

1189*a* TOMLINSON'S EX. No. 19.

Illinois Central Railroad Company.

Fifty-second Annual Report of the Directors to the Stockholders for the Year Ended June 30, 1902.

The number of miles of railroad operated by the Illinois Central Railroad Company on June 30, 1901, was.....	4,265.50
On December 1, 1901, there was added The Kentucky Western Railway.....	18.40
Making the number of miles of railroad in operation on June 30, 1902.....	4,283.90

The average number of miles of railroad operated during the year ended June 30, 1902, has been 4,276.23, against an average of 4,214.92 operated in the preceding year.

The following is a summary of the Company's business for the year ended June 30, 1902:

Gross Receipts from Traffic.....		$40,821,030 00
Expenses of operation.....	$26,248,122 86	
Taxes	1,766,217 22	
		28,014,340 08
Income from Traffic, being the excess of Receipts over Expenses of Operation and Taxes		$12,806,690 04
Net Receipts from Sale of Lands.....		16,697 24
Income from Investments, and Miscellaneous Profits		3,535,108 66
Excess of Income over Expenses of Operation and Taxes.....		$16,358,495 94

From this there have been paid:		
Interest on Funded Debt, and Bonds Drawn under Sinking Fund	$3,065,365 00	
Rent of Subsidiary Railroads	3,502,669 06	
Total Fixed Charges		6,568,034 06
Net Income for the year ended June 30, 1902		$9,790,461 88
Surplus Dividend Fund brought forward June 30, 1901, as shown in last Report		1,088,486 92
Amount Available		$10,878,948 80
This has been disposed of as follows:		
94th Semi-Annual Cash Dividend, paid March 1, 1902	$2,376,000 00	
95th Semi-Annual Cash Dividend, payable August 30, 1902	2,376,000 00	
		$4,752,000 00
Set apart, as explained below, to provide at maturity for accrued interest not yet payable:		
On bonds of Illinois Central R. R. Co.	$593,291 68	
On bonds of Chicago, St. Louis & New Orleans R. R. Co.	61,038 12	
	$654,329 80	
For Betterments	4,340,172 08	
		4,994,501 88
Carried forward to Surplus Dividend Fund, as of June 30, 1902, and set apart as applicable to future Dividends		1,132,446 92
		$10,878,948 80

1189*b*–1189*d* As compared with the preceding year:

The average number of miles of railroad operated increased	61.31	or	1.45 per cent.
Gross Receipts from Traffic increased	$3,920,569 65	"	10.62 "
Expenses of Operation increased	1,996,445 30	"	8.23 "
Taxes increased	176,102 35	"	11.07 "
Income from Traffic increased	1,748,022 00	"	15.81 "

Net Receipts from Sale of Lands decreased.....	11,910 35	"	41.63	"
Income from Investments, and Miscellaneous Profits increased	1,058,533 96	"	42.74	"
Excess of Income over Expenses of Operation and Taxes increased	2,794,645 61	"	20.60	"
Total Fixed Charges decreased	28,156 52	"	.43	"
Net Income for the fiscal year increased	2,822,802 13	"	40.51	"
The amount available after deducting Fixed Charges increased	2,865,062 13	"	35.75	"
The sum appropriated from Income for Betterments increased	1,444,772 33	"	49.89	"
Surplus Dividend Fund has been augmented by.....	43,960 00	"	4.04	"

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1189*e* Standards of Maintenance.

The policy of improving the standards of maintenance has been strictly adhered to. The average weight of rail in main track is 70.56 pounds to the yard, as against 63.83 pounds last year. The average tractive capacity of locomotives on level track has increased from 3,294 tons to 3,448 tons. The average capacity of revenue freight cars from 29.43 tons to 30.86. The passenger train equipment has been improved by the purchase of 28 new cars to replace old ones.

All of the 947 engines, the 728 passenger, mail and express cars, the 42,419 freight cars and the 469 work cars, shown on the inventory, are in existence, excepting 10 passenger cars and 135 freight cars. Orders have been given for replacing these cars with new ones, and their cost has been provided through charges already made to "Maintenance of Equipment."

During the year 66 new locomotives were bought, of which 11 replaced old ones disposed of and 55 constitute additions to the equipment. One old engine was received with the Kentucky Western Railway.

Five thousand one hundred and thirty-four new freight cars were bought, or built in the Company's shops. Ten old freight cars were received with the Kentucky Western Railway. Seven old freight cars were transformed into work cars. Of the new freight cars 1,216 replaced old cars destroyed, or disposed of, and 3,918 were added to the equipment.

Air brakes are attached to 79.31 per cent. of the freight car equipment.

Additional Second Track.

During the year, 197.75 miles of additional second main track were put in service. At its close there were in service 452.79 miles of second track and 82.46 miles of third and other additional main tracks, making together 535.25 miles. In order to complete the double track between Chicago and Fulton Ky., for a distance of 406 miles, there are yet to be put in service 80 miles, for which the grading is nearly completed. To complete the double track between Jackson, Miss., and New Orleans, for a distance of 185 miles, there are yet to be put in service 139 miles. While much of the grading there required has been done, this work is not so far advanced as that between Chicago and Fulton.

Permanent Improvements.

In the betterment of the property, there have been spent during the year $8,097,646.59. Of this sum $268,412.19 were charged to Betterment Funds previously provided and $4,340,172.08 were defrayed from Current Income, the remaining $3,489,062.32 being charged to Capital. Table No. 1 submitted herewith, sets forth these permanent improvements in detail and shows that the cost of the 55 new locomotives, of the 3,918 new freight cars and of the Lidgerwood ballast unloaders added to the equipment was $3,682,146.30, which of itself largely exceeded the sum charged to capital.

Increased Public Service.

The attention of the proprietors is especially invited to a new Table, No. 8, submitted herewith, in which the number of Passengers carried one mile and the number of tons of Revenue Freight carried one mile have been added together, so as to show the number of Units of Service which have been annually rendered by the Railroad Company to the Public. It will be seen that in each of the thirteen years last past there has been an increase not only in the units of service rendered but also in the units of service rendered per mile of railroad operated. The service so rendered in the year under report (4,853,383,352 units) was more than four-fold what it had been in the year ended June 30, 1889 (1,203,982,725 units), and the service so rendered per mile of railroad operated was more than two and a half times as great as it had been thirteen years before.

But this table fails to show the full measure of the increased service rendered, as it takes no account of the transportation of Company Freight, of which 810,734,752 tons were this year carried one mile, as against 680,095,348 tons carried one mile in the year preceding. This year's increase in the volume of Company Freight therefore was 19.21 per cent. in contrast with an increase of only 10.86 per cent. in the number of tons of Revenue Freight carried one mile. (See Table No. 5.) While it is not now possible to state the volume of Company Freight which was carried one mile in the earlier years, it is certain that as a necessary incident of the business there were carried one mile, during the year under report, in addition to the

4,452,073,927 tons of Revenue Freight, 810,734,752 tons of Company Freight; that is to say, the total service rendered in the carriage of freight of all kinds exceeded that shown in Table No. 8 by 6.21 per cent.

Increase of Capital Stock.

An appreciation of this constant growth in the volume of the service demanded of the Company, induced the Directors, on June 18, 1902, to call a special meeting of the Stockholders, to be held August 29, 1902, for the purpose of taking action on the Directors' recommendation that the Capital Stock be further increased from $79,200,000 to $95,040,000 by an issue of 158,400 new shares. Since the close of the fiscal year this recommendation has met with the approval of the Stockholders, and the privilege has been given to each stockholder of record on September 19, 1902, to subscribe at par for one share of new stock in respect to every five shares then registered in his name.

The attention of the Stockholders is invited to the accompanying Balance Sheet and to the Abstracts explanatory thereof, as well as to the various Tables showing, in detail, the workings of the Company's business.

By order of the Board of Directors,

ALEXANDER G. HACKSTAFF, *Secretary.*

New York, September 17, 1902.

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TABLE No. 5.

Comparative Statement of General Operations for the Years Ended June 30, 1902 and 1901.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1902.	1901.			
Miles of Road Operated	4,276.23	4,214.92	61.31	1.45	
Miles run by Freight Trains	15,689,534	17,076,817		8.12	1,387,283
Miles run by Passenger Trains	10,449,394	10,824,720		3.47	375,326
Miles run by Mixed Trains	514,895		514,895		
Total Revenue Train Mileage	26,653,823	27,901,537		4.47	1,247,714
Miles run by Construction Trains	1,040,084	1,689,891		38.45	649,807
Miles run by Switching Engines	6,778,757	7,578,856		10.56	800,099
Other Engine Mileage	820,626		820,626		
Total Engine Miles	35,293,290	37,170,284		5.05	1,876,994
Mileage of Loaded Freight Cars	299,243,202	278,103,314	21,139,888	7.60	
Mileage of Empty Freight Cars	95,460,268	107,873,135		11.51	12,412,867
Total Mileage of Freight Cars	394,703,470	385,976,449	8,727,021	2..	
Mileage of Passenger Cars	52,146,209	50,751,379	1,394,830	2.75	
Number of Tons of Revenue Freight Carried One Mile	4,452,073,927	4,016,085,602	435,988,325	10.86	
Number of Tons of Company Freight Carried One Mile	810,734,752	680,095,348	130,639,404	19.21	
Total Number of Tons of Freight Carried One Mile	5,262,808,679	4,696,180,950	566,627,729	12.07	
Number of Passengers Carried One Mile	401,309,425	373,919,236	27,390,189	7.33	

Gross Receipts	$40,821,030.12	$36,900,460.47	$3,920,569.65	10.62	
Operation Expenses	26,248,122.86	24,251,677.56	1,996,445.30	8.23	
Excess of Receipts over Operation Expenses, exclusive of Taxes	14,572,907.26	12,648,782.91	1,924,124.35	15.21	
Gross Receipts per Mile of Road	$9,546.03	$8,754.72	$791.31	9.04	
Operation Expenses per Mile of Road	6,138.15	5,753.77	384.38	6.68	
Excess of Receipts over Operation Expenses, per Mile of Road, exclusive of Taxes	3,407.88	3,000.95	406.93	13.56	
Gross Receipts per Revenue Train Mile	$1.53 15-100	$1.32 25-100	$0.20 90-100	15.80	
Operation Expenses per Revenue Train Mile	.98 48-100	.86 92-100	.11 56-100	13.30	
Excess of Receipts over Operation Expenses, per Revenue Train Mile, exclusive of Taxes	.54 67-100	.45 33-100	.09 34-100	20.60	
Tons of Revenue Freight Carried One Mile per Mile of Road Operated	1,041,121	952,826	88,295	9.27	
Passengers Carried One Mile per Mile of Road Operated	93,847	88,713	5,134	5.79	
Average Number of Loaded Freight Cars in Train	18.47	16.28	2.19	13.45	
Average Number of Empty Freight Cars in Train	5.89	6.32	.....	6.80	.43
Average Number of Total Freight Cars in Train	24.36	22.60	1.76	7.79	

TABLE No. 5—Continued.

Comparative Statement of General Operations for the Years Ended June 30, 1902 and 1901.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1902.	1901.			
Average Number of Tons of Revenue Freight in Train.....	274.75	235.18	39.57	16.83	
Average Number of Tons of Company Freight in Train..	50.03	39.82	10.21	25.64	
Average Number of Tons of All Freight in Train	324.78	275.00	49.78	18.10	
Average Number of Tons of Revenue Freight in each Loaded Car.	14.88	14.44	.44	3.05	
Average Number of Tons of All Freight in each Loaded Car....	17.59	16.89	.70	4.14	
Average Number of Passengers in Train	36.60	34.54	2.06	5.96	

TABLE No. 6.

Receipts and Expenses per Mile of Road, Showing Amount, per Cent. of Gross Receipts, and per Cent. of Operation Expenses for the Years Ended June 30, 1902 and 1901.

	Amount.					Per cent. of gross receipts.		Per cent. of operation expenses.	
	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.	Year ended June 30th—		Year ended June 30th—	
	1902.	1901.				1902.	1901.	1902.	1901.
Gross Receipts:									
Freight	$6,480 19	$5,901 97	$578 22	9 80	.....	67.9	67.4		
Passenger	1,875 63	1,738 52	137 11	7.89	.....	19.6	19.9		
Miscellaneous	1,190 21	1,114 23	75 98	6.82	.....	12.5	12 7		
Total	$9,546 03	$8,754 72	$791 31	9.04	.....	100	100		
Operation Expenses:									
Maintenance of Way and Structures	$1,321 17	$1,390 49	.....	4.99	$69 32	13.8	15.9	21.5	24.2
Maintenance of Equipment	1,241 70	1,037 09	$204 61	19.73	.....	13.0	11.8	20.3	18 0
Conducting Transportation	3,377 34	3,137 26	240 08	7.65	.....	35.4	35.8	55.0	54.5
General Expenses	197 94	188 93	9 01	4 77	.....	2.1	2.2	3.2	3.3
Total	$6,138 15	$5,753 77	$384 38	6.68	.....	64.3	65.7	100	100
Taxes	$413 03	$377 25	$35 78	9.48	.....	4.3	4.3		
Net receipts	$2,994 85	$2,623 70	$371 15	14.15	.....	31.4	30.0		

TABLE No. 7.

Comparative Statement of Traffic for the Years Ended June 30, 1902 and 1901.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1902.	1901.			
Tons of Revenue Freight Carried	19,096,441	17,735,749	1,360,692	7.67	
Tons of Revenue Freight Carried One Mile	4,452,073,927	4,016,085,602	435,988,325	10.86	
Average Distance Haul of One Ton	233.14 miles	226.44 miles	6.70 miles	2.96	
Freight Receipts	$27,710,782.42	$24,876,338.77	$2,834,443 65	11.39	
Average Receipts per Ton	$1.45	$1.40	$0.05	3.57	
Average Receipts per Ton per Mile	622-1000c	619-1000c	3-1000c	.48	
Freight Receipts per Mile of Road	$6,480 19	$5,901.97	$578.22	9.80	
*Miles Run by Freight Trains	16,204,429	17,076,817		5.11	872,388
Freight Receipts per Train Mile	$1.71 1-100c	$1.45 67-100c	$0.25 34-100c	17.40	
Number of Passengers Carried	19,006,204	17,865,439	1,140,765	6.39	
Number Carried One Mile	401,309,425	373,919,236	27,390,189	7.33	
Average Number of Miles Traveled by each Passenger	21.11 miles	20.93 miles	18-100 mile	.86	
Passenger Receipts	$8,020,648.67	$7,327,742.36	$692,906.31	9.46	
Average Fare of each Passenger	42 20-100c	41 2-100c	1 18-100c	2.88	
Average Receipts per Passenger per Mile	1 999-1000c	1 960-1000c	39-1000c	1.99	
Passenger Receipts per Mile of Road	$1,875 64	$1,738.52	$137.12	7.89	
Gross Receipts of Passenger Trains	$10,014,309.24	$9,164,037.50	$850,271.74	9.28	
Gross Receipts of Passenger Trains per Mile of Road	$2,341.85	$2,174.19	$167.66	7.71	
*Miles Run by Passenger Trains	10,964,289	10,824,720	139,569	1.29	
Receipts of Passenger Trains per Train Mile	91 34-100c	84 66-100c	6 68-100c	7.89	

*NOTE.—This year, in order to conform to the methods adopted by the Interstate Commerce Commission and the Association of American Railway Accounting Officers, the freight and passenger train mileage each includes the total miles run by mixed trains, with double heading and light engine mileage excluded. Last year the latter class of mileage was included, and the mileage of mixed trains divided, 75% to freight and 25% to passenger service.

TABLE No. 8.

Statement of Service Rendered to the Public by the Railroad Company in the Transportation of Passengers and of Revenue Freight and of Such Service per Mile of Railroad Operated in each Year from July 1, 1888, to June 30, 1902.

Years ended June 30th—	Service rendered to the public.				Miles of railroad operated.	Service rendered per mile operated.	
	Number of passengers carried one mile.	Number of tons of revenue freight carried one mile.	Units of service rendered (being the sum of the figures given in the two preceding columns).	Increase over preceding year in units of service rendered.		Units of service rendered per mile of railroad operated.	Increase over preceding year in units of service rendered per mile of railroad operated.
1889	150,688,320	1,053,294,405	1,203,982,725	.....	2,713.62	443,681	
1890	158,167,606	1,189,282,889	1,347,450,495	143,467,770	2,875.18	468,649	24,968
1891	183,875,079	1,302,002,213	1,485,877,292	138,426,797	2,875.18	516,795	48,146
1892	208,836,686	1,411,375,499	1,620,212,185	134,334,893	2,883.44	561,903	45,108
1893	257,744,648	1,512,542,558	1,770,287,206	150,075,021	2,888.30	612,917	51,014
1894	317,711,176	1,460,551,031	1,778,262,207	7,975,001	2,888.30	615,678	2,761
1895	195,924,818	1,586,080,584	1,782,005,402	3,743,195	2,888.30	616,974	1,296
1896	222,034,712	2,018,129,060	2,240,163,772	458,158,370	3,067.58	730,271	113,297
1897	212,985,073	2,258,388,132	2,471,373,205	231,209,433	3,130.21	789,523	59,252
1898	263,336,693	2,722,540,585	2,985,877,278	514,504,073	3,774.85	790,992	1,469
1899	268,589,994	2,799,941,184	3,068,531,178	82,653,900	3,670.80	835,930	44,938
1900	305,643,549	3,425,794,698	3,731,438,247	662,907,069	3,845.43	970,357	134,427
1901	373,919,236	4,016,085,602	4,390,004,838	658,566,591	4,214.92	1,041,539	71,182
1902	401,309,425	4,452,073,927	4,853,383,352	463,378,514	4,276.23	1,134,968	93,429
Increase in 1902 over 1889	250,621,105	3,398,779,522	3,649,400,627	.....	1,562.61	691,287	
Ratio of the service rendered in 1902 to that rendered in 1889	2.6632	4.2268	4.0311	.....	1.5758	2.5581	

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1189s & 1189t TOMLINSON'S EX. No. 18.

Illinois Central Railroad Company.

Fifty-fourth Annual Report of the Directors to the Stockholders for the Year Ended June 30, 1904.

The number of miles of railroad operated by the Illinois Central Railroad Company on June 30, 1903, was	4,301.10

* * * * * * *

The average number of miles of railroad operated during the year ended June 30, 1904, has been 4,340.35, against an average of 4,292.98 operated in the preceding year.

The following is a summary of the Company's business for the year ended June 30, 1904:

Gross Receipts from Traffic		$46,831,135 90
Expenses of Operation	$32,793,251 31	
Taxes	1,942,430 86	
		34,735,682 17
Income from Traffic, being the excess of Receipts over Expenses of Operation and Taxes		$12,095,453 73
Net Receipts from Sale of Lands		41,053 42
Income from Investments and Miscellaneous Profits		2,675,495 72
Excess of Income over Expenses of Operation and Taxes		$14,812,002 87
From this there have been paid:		
Interest on Funded Debt, and on St. Louis Division Prior Lien Bonds	$3,481,824 91	
Rent of Subsidiary Railroads	2,464,250 45	
Total Fixed Charges		5,946,075 36
Net Income for the year ended June 30, 1904		$8,865,927 51
Surplus Dividend Fund brought forward June 30, 1903, as shown in last Report		1,178,186 92
Amount Available		$10,044,114 43

This has been disposed of as follows:

98th Semi-Annual Cash Dividend, paid March 1, 1904.....	$2,851,200 00	
99th Semi-Annual Cash Dividend, payable September 1, 1904....	2,851,200 00	
		$5,702,400 00
Advanced to the Dubuque & Sioux City R. R. Co., as explained below	$536,618 76	
Set apart for Betterments.....	2,579,328 75	
		3,115,947 51
Carried forward to Surplus Dividend Fund, as of June 30, 1904, and set apart as applicable to future Dividends		1,225,766 92
		$10,044,114 43

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1189*u*–1189*ee* Permanent Improvements.

In the betterment of the property, there have been spent during the year $9,745,118.43 as set forth in detail in "Table No. 1." Under a contract made November 1, 1872, the Michigan Central R. R. Co. had the option of paying to the Illinois Central R. R. Co. $272,987.50 in lieu of future rent for the use of certain lands in Chicago, which option was exercised during the year and the amount so received applied toward expenditures for betterments. Of the remainder, $2,579,328.75 were paid from current income and $6,892,802.18 were charged to Capital.

Railroads and Equipment.

During the year the amount charged to "Railroads and Equipment" has been increased by $9,415,460.82. Of this sum $6,892,802.18 *was* charged as above stated to Capital, and the remainder represents the book value of the railroads to which title has been taken, a like sum being deducted from the item in the Balance Sheet which is known as "Advances on Account of Other Railroads."

Standards of Maintenance.

The policy of improving the standards of maintenance has been strictly adhered to. The average weight of rail in main track is 72.78 pounds to the yard, as against 71.96 pounds last year. The average tractive capacity of locomotives on level track has increased from 3,573 tons to 3,734 tons. The average capacity of revenue freight cars from 32.87 tons to 33.77. The passenger train equipment has been improved by the purchase of 34 new cars, including the 8 steel cars referred to in last report as being under construction for the suburban service at Chicago

All of the 1,086 engines, the 787 passenger, mail and express cars, the 53,576 freight cars and the 1,446 work cars, shown on the inventory, are in existence, excepting 2 passenger cars, 348 freight cars, and 13 work cars. Orders have been given for replacing these cars with new ones, and their cost has been provided through charges already made to "Maintenance of Equipment."

During the year 84 new locomotives were bought, of which 1 replaced an old engine disposed of and 83 constitute additions to the equipment.

Three thousand six hundred and thirteen new freight cars and one work car were bought or built in the Company's shops. Of these new freight cars, 1,148 replaced old cars destroyed, or disposed of, and 2,466 were added to the equipment.

Air brakes are attached to 88.31 per cent. of the freight car equipment.

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TABLE No. 5.

Comparative Statement of General Operations for the Years Ended June 30, 1904 and 1903.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1904.	1903.			
Miles of Road Operated.....	4,340 35	4,292.98	47.37	1.10	
Miles run by Freight Trains.....	18,320,526	17,483,072	837,454	4.79	
Miles run by Passenger Trains...	10,827,134	10,794,544	32,590	.30	
Miles run by Mixed Trains.....	476,506	479,438	....	.61	2,932
Total Revenue Train Mileage	29,624,166	28,757,054	867,112	3.02	
Miles run by Construction Trains.	811,522	902,745	.....	10.11	91,223
Miles run by Switching Engines..	7,289,159	7,086,736	202,423	2.85	
Other Engine Mileage.....	1,519,414	1,245,403	274,011	22.00	
Total Engine Miles.....	39,254,261	38,001,938	1,252,323	3.30	
Mileage of Loaded Freight Cars..	333,645,198	327,589,428	6,055,770	1.85	
Mileage of Empty Freight Cars..	125,700,922	114,718,427	10,982,495	9.57	
Total Mileage of Freight Cars....	459,346,120	442,307,855	17,038,265	3.85	
Mileage of Passenger Cars.....	56,153,080	54,690,538	1,462,542	2.67	
Number of Tons of Revenue Freight Carried One Mile.....	5,221,132,514	5,176,543,778	44,588,736	.86	
Number of Tons of Company Freight Carried One Mile.....	1,023,811,034	841,619,476	182,191,558	21.65	
Total Number of Tons of Freight Carried One Mile	6,244,943,548	6,018,163,254	226,780,294	3.77	
Number of Passengers Carried One Mile.....	485,092.114	455,432,129	29,659,985	6.51	

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TABLE No. 5—Continued.

Comparative Statement of General Operations for the Years Ended June 30, 1904 and 1903.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1904.	1903.			
Gross Receipts	$46,831,135.90	$45,186,076.86	$1,645,059 04	3.64	
Operation Expenses	32,793,251.31	29,835,883.35	2,957,367.96	9.91	
Excess of Receipts over Operation Expenses, exclusive of Taxes	14,037,884.59	15,350,193.51		8.55	$1,312,308.92
Gross Receipts per Mile of Road	$10,789.72	$10,525.57	$264.15	2.51	
Operation Expenses per Mile of Road	7,555.44	6,949.92	605.52	8.71	
Excess of Receipts over Operation Expenses, per Mile of Road, exclusive of Taxes	3,234.28	3,575.65		9.55	$341.37
Gross Receipts per Revenue Train Mile	$1.58 08-100	$1.57 13-100	$0.00 95-100	.60	
Operation Expenses per Revenue Train Mile	1.10 69-100	1.03 75-100	.06 94-100	6.69	
Excess of Receipts over Operation Expenses, per Revenue Train Mile, exclusive of Taxes	.47 39-100	.53 38-100		11.22	$0.05 99-100
Tons of Revenue Freight Carried One Mile per Mile of Road Operated	1,202,929	1,205,816		.24	2,887
Passengers Carried One Mile per Mile of Road Operated	111,763	106,088	5,675	5.35	

Average Number of Loaded Freight Cars in Train	17.75	18.24		2.69	.49
Average Number of Empty Freight Cars in Train	6.69	6.38	.31	4.86	
Average Number of Total Freight Cars in Train	24.44	24.62		.73	.18
Average number of Tons of Revenue Freight in Train	277.76	288.19		3.62	10.43
Average Number of Tons of Company Freight in Train	54.47	46.85	7.62	16.36	
Average Number of Tons of All Freight in Train	332.23	335.04		.84	2.81
Average Number of Tons of Revenue Freight in each Loaded Car	15.65	15.80		.95	.15
Average Number of Tons of All Freight in each Loaded Car	18.72	18.37	.35	1.91	
Average Number of Passengers in Train	42.91	40.40	2.51	6.21	

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TABLE No. 6.

Receipts and Expenses per Mile of Road, Showing Amount, per Cent. of Gross Receipts, and per Cent. of Operation Expenses for the Years Ended June 30, 1904 and 1903.

	Amount.					Per cent. of gross receipts.		Per cent. of operation expenses.	
	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.	Year ended June 30th—		Year ended June 30th—	
	1904.	1903.				1904.	1903.	1904.	1903.
Gross Receipts:									
Freight	$7,301 85	$7,126 07	$175 78	2.47		67.7	67.7		
Passenger	2,201 38	2,091 14	110 24	5.27		20.4	19.9		
Miscellaneous	1,286 49	1,308 36		1.67	$21 87	11.9	12.4		
Total	$10,789 72	$10,525 57	$264 15	2.51		100	100		
Operation Expenses:									
Maintenance of Way and Structures	$1,308 49	$1,376 48		4.94	$67 99	12.1	13.1	17.3	19.8
Maintenance of Equipment	1,687 27	1,461 59	$225 68	15.44		15.6	13.9	22.3	21.0
Conducting Transportation	4,328 21	3,884 56	443 65	11.42		40.1	36.9	57.3	55.9
General Expenses	231 47	227 29	4 18	1.84		2.2	2.1	3.1	3.3
Total	$7,555 44	$6,949 92	$605 52	8.71		70.0	66.0	100	100
Taxes	$447 53	$433 75	$13 78	3.18		4.2	4.1		
Net Receipts	$2,786 75	$3,141 90		11.30	$355 15	25.8	29.9		

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TABLE No. 7.

Comparative Statement of Traffic for the Years Ended June 30, 1904 and 1903.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1904.	1903.			
Tons of Revenue Freight Carried	22,420,814	21,881,870	538,944	2.46	
Tons of Revenue Freight Carried One Mile	5,221,132,514	5,176,543,778	44,588,736	.86	
Average Distance Haul of One Ton	232.87 miles	236.57 miles		1.56	3.70 miles
Freight Receipts	$31,692,575.33	$30,592,094.32	$1,100,481.01	3.60	
Average Receipts per Ton	$1.41	$1.40	$0.01	.71	
Average Receipts per Ton per Mile	607-1000c	591-1000c	16-1000c	2.71	
Freight Receipts per Mile of Road	$7,301.35	$7,126.07	$175.78	2.47	
* Miles Run By Freight Trains	18,797,032	17,962,510	834,522	4.65	
Freight Receipts per Train Mile	$1.68 60-100c	$1.70 31-100c		1.00	1 71-100c
Number of Passengers Carried	22,563,613	21,231,607	1,332,006	6.27	
Number Carried One Mile	485,092,114	455,432,129	29,659,985	6.51	
Average Distance Traveled by each Passenger	21.50 miles	21.45 miles	0.05 miles	.23	
Passenger Receipts	$9,554,743.16	$8,977,228.09	$577,515.07	6.43	
Average Fare of each Passenger	$0.42 35-100c	$0.42 28-100c	7-100c	.17	
Passenger Receipts per Passenger per Mile	$0.01 970-1000c	$0 01 971-1000c		.05	1-1000c
Passenger Receipts per Mile of Road	$2,201.38	$2,091.14	$110.24	5.27	
Gross Receipts of Passenger Trains	$11,593,094.17	$11,044,333.23	$548,760.94	4.97	
Gross Receipts of Passenger Trains per Mile of Road	$2,671.00	$2,572.65	$98.35	3.82	
* Miles Run by Passenger Trains	$11,303,640	11,273,982	29,658	.26	
Receipts of Passenger Trains per Train Mile	$1.02 56-100c	$0.97 96-100c	$0.04 60-100c	4.70	

* Includes Mileage of Mixed Trains.

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TABLE No. 8.

Statement of Service Rendered to the Public by the Railroad Company in the Transportation of Passengers and of Revenue Freight and of Such Service per Mile of Railroad Operated in Each Year from July 1, 1894, to June 30, 1904.

Years ended June 30th—	Service rendered to the public.				Miles of railroad operated.	Service rendered per mile operated.	
	Number of passengers carried one mile.	Number of tons of revenue freight carried one mile.	Units of service rendered (being the sum of the figures given in the two preceding columns).	Increase over preceding year in units of service rendered.		Units of service rendered per mile of railroad operated.	Increase over preceding year in units of service rendered per mile of railroad operated.
1895	195,924,818	1,586,080,584	1,782,005,402	.....	2,888.30	616,974	
1896	222,034,712	2,018,129,060	2,240,163,772	458,158,370	3,067.58	730,271	113,297
1897	212,985,073	2,258,388,132	2,471,373,205	231,209,433	3,130.21	789,523	59,252
1898	263,336,693	2,722,540,585	2,985,877,278	514,504,073	3,774.85	790,992	1,469
1899	268,589,994	2,799,941,184	3,068,531,178	82,653,900	3,670.80	835,930	44,938
1900	305,643,549	3,425,794,698	3,731,438,247	662,907,069	3,845.43	970,357	134,427
1901	373,919,236	4,016,085,602	4,390,004,838	658,566,591	4,214.92	1,041,539	71,182
1902	401,309,425	4,452,073,927	4,853,383,352	463,378,514	4,276.23	1,134,968	93,429
1903	455,432,129	5,176,543,778	5,631,975,907	778,592,555	4,292.98	1,311,904	176,936
1904	485,092,114	5,221,132,514	5,706,224,628	74,248,721	4,340.35	1,314,692	2,788
Increase in 1904 over 1895.	289,167,296	3,635,051,930	3,924,219,226	.....	1,452.05	697,718	
Ratio of the service rendered in 1904 to that rendered in 1895...	2.4759	3.2918	3.2021	.....	1.5027	2.1309	

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1190 Q. You made some mention of the 28 hour law, that does not affect the shipments from Western Iowa in here and on your road, does it?

A. Yes, sir, prior to three or four months or six months ago we were not running our stock trains at as high a rate of speed as we are today, from Western Iowa points, and the higher the rate of speed, the more expense of that service is going to be on us, consequently a year ago if we were handling stock in 32 or 33 hours it cost us less than it is costing us today in handling it at 27 hours, because we have got to reduce our trains in proportion as we increase that speed.

Q. Wherein does that extra cost apply. You would run a train through from out at Fort Dodge here, we will say, in 25 hours, and you run another one in 22 hours, wherein consists the difference in cost that amounts to anything in running those two trains?

A. There is about ten per cent. additional cost for this reason: You take a train and give it four hours to go over a division of a hundred miles, that is 25 miles an hour, and you rate them 400 gross tons. If you want to run that in three hours you have got to reduce your tonnage down to probably less than three hundred tons.

Q. Well, I will waive that question I asked you, I will ask it in a different form. We will take a train of 25 cars of cattle, now pass out the tonnage, and take two trains of 25 cars of cattle and you run one train over here in 25 hours from Fort Dodge and

1191 you run another in 20 hours, we will put it that way, from Fort Dodge to Chicago. Now, point out the items that would make the one more expensive than the other?

A. You say take one train of twenty five cars——

Q. Both trains 25 cars, and one runs in 25 hours and the other one 20?

A. I think the tonnage clerk would bring those reports into me and we would have an investigation as to why they did not put 25 cars on both.

Q. I didn't ask that.

A. That is not a condition, Mr. Cowan, that exists with us; we don't run them that way.

The COURT: He said if both were 25 cars.

A. If we could run one in 20 hours of 25 cars we should naturally haul more than 25 cars in another at 25 miles an hour, and that is not the way we load our engines.

Mr. COWAN:

Q. I know, I was trying to get at the difference in items of cost, if you will just answer the question?

A. Yes, sir.

Mr. LYNDE: Wait a moment, just get his answer

Mr. COWAN: He was not answering my question.

The COURT: Repeat the question and see if he can answer it.

Mr. COWAN:

Q. The question is to name the difference in the items of cost in

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running two trains, both *of* from Fort Dodge to Chicago.
1192 Now, I am asking for the difference in the items of cost.

Mr. SEVERANCE: By reason of the speed?

Mr. COWAN: I do not care what it is by reason of, I just asked what the items of difference of cost would be in the two?

A. It is conceded the train running in 20 hours would use more coal than the train running in 25.

Q. Let us stick at that point and get at the amount?

A. I don't know the amount.

Q. Well, in your judgment?

A. Oh, it is conceded the item would not amount to very much.

Q. That is just what I know, I want to get the items.

A. The second item entering into that is your liability of accidents in running at the higher speed, more liable to accidents.

The COURT: Does that amount to very much where there is a good road?

A. Well, it did during the period that we were running these trains at the high speed, we had most of our bad accidents; when the high speed was taken off these stock trains and they were reduced down four or five hours we have had no wrecks practically in a year. We paid $35 last year in personal injuries for the reason that our schedules were longer, the men were not keyed to a high tension and running at a high speed in order to make a market, they had their train in better control.

1193 The COURT: That is two items, now go on.

Mr. COWAN: I want to get at the amount of that one. You seem to be so well informed on these things.

A. It won't amount to very much, I should think one ton would be about it.

Q. How much does the coal cost you?

A. It costs $1.05, *a* $1.05 to $1.15 at the mines. In Iowa it is plus $1.25 a ton freight on it, it would be probably $2.40 for the ton of coal.

Q. What are the other items?

A. For the whole trip?

Q. As to the accident, that is purely speculative as to what would happen to the one and what would happen to the other?

A. No, we had a stock accident last Monday morning here in Illinois, on a down grade. The first section—it was two stock trains; the first section had cleared the station and was on a down grade at a pretty high speed, and either the air brake hose burst, or the train uncoupled and stopped, and before the flagman could get back, and flag the second section running down this hill at an excessive speed to make the markets, found itself in a position that it could not stop and control within that distance that the flagman got back, and they went into the caboose and killed one stockman, badly injured, very seriously injured another, and injured two or three others and a cost estimated to us of $30 to $40,000.

1194 Q. Do you know which train was running the faster?

A. Well, the one was stopped, the other one was running; the one that broke stopped.

Q. Do you know which train was running faster before the accident?

A. No, I have not seen the details of the investigation of the accident, but it occurred by reason of the fast speed and the necessity for fast speed.

Q. Now, are you able to say that if the one train was making it to Chicago in 25 hours and the other in 20 hours, which the accident would have happened to of that character?

A. Well, when you get trains up to a certain speed and give them reasonable tonnage, they delay somewhat in ascending the grade and try to make up in going down the hill; there isn't a stock man or any man who rides on a freight train but knows that that is a fact.

Q. And they do that on slow trains as well as the fast trains?

A. Not to the same extent, because their schedules are much slower and the dispatchers have got a check on all trains, they know what a stock train makes and they know what the other man makes.

Q. Now, let us go to the other items, you have named those two?

A. The wages of all crews are the same. I don't know that
1195 there is any more wear and tear to the equipment, not any perceptible, there is no way of getting a check on it. As far as the track is concerned, if your joints are out of condition, it is conceded that the faster an engine, by all experts, the faster an engine is going, the harder your driver will strike the tracks, the more tonnage of force there is to it.

Q. Undoubtedly?

A. But that is also a small item on the railroads today because there are very few low joints.

Q. It is a very insignificant item?

A. The whole proposition does not amount to much provided your trains are handled safely at the high speed.

Q. What other items?

A. That is about all; I don't know of any other material items in it.

Q. Now, it is 372 miles from Fort Dodge to Chicago, isn't it?

A. Yes, sir.

Q. What are the items of expense, the outlay which you can name in one of these 25 car trains that it cost your company to carry that train to Chicago?

A. How do you mean? The charges or cost of that?

Q. The cost to your company?

A. Well, I think your coal expense is nearly as heavy as any. Then you have your wages of train men.

Q. What is the wages of your train men?

A. Well, $4.25, I think—$4.30 for enginemen, firemen
1196 is 65 per cent. of that; conductors about $3.25 a hundred miles, brakemen I think is $2.40 cents per hundred miles—$2.30 on the brakemen.

Q. Now, you start the train out from Fort Dodge, what expense are you out for that train at the depot where it does not stop?

A. It is a train of stock that came into Fort Dodge?

Q. I am taking a train of stock of 25 cars from Fort Dodge to Chicago?

A. Well, you have got to build your train up at Fort Dodge.

Q. Do the billing at Fort Dodge?

A. Yes, sir, build it up and fix the trains when they come in so you will get each stock man's stock in the same train, they won't permit us to send it in different trains.

Q. That is the billing and the fixing up of the train?

A. Yes, sir, building up the train.

Q. How much do you consider that to be?

A. Fifty cents a car for switching, I think, at a point like that is a reasonable charge.

Q. And what charge for your billing, do you count that?

A. No, the freight is billed before it gets to Fort Dodge.

Mr. LYNDE: "Build" he said.

The WITNESS: Shaping it up, getting the different consignments for the different men in charge in one train to go into the yards together.

1197 Mr. COWAN: What expenses are you at for your station agent after you have got your train built up, say at Fort Dodge?

A. Very little, if any; I would not count it.

Q. That would not be counted from there to Chicago?

A. No.

Q. Now, what are your terminal charges when you reach Chicago?

A. On stock?

Q. Yes.

A. Well, it costs us about on stock from the West, I should say, it cost us about a dollar a car over the $2. which we claim for terminal charges for moving it into the yards. Our average on the stock from the South and the stock from the west a year ago or so, when the terminal case was up, it figured out $2.72 per car of stock. A car of stock from the South comes in on a trackage charge of fifty cents per car each way as against 75 on the Western stock, making it about $1. a car that we lose over and above the terminal charge of getting to and from the yards.

Q. Now, how would you divide the expense of mainte-ance of your way and structures, as between dead freight and live stock, how would you divide it if you were dividing by the train?

A. If I was dividing it I would take all the trains as a whole and divide one against the other.

—. You would waste more trying to figure it out than it
1198 would amount to, take it all together, train mileage?

A. Yes, sir.

Q. Freight train mileage?

A. Yes, sir, freight train mileage.

Q. So both trains are about the same so far as expenses of maintenance and way are concerned?

A. Almost, yes, sir.

Q. Now, as to the maintenance of your locomotives, you have a statement, I don't know whether it is in this printed annual state-

ment or not, but you have a statement showing the cost of maintenance per mile run of your locomotive, to the Commission?

A. I have seen those figures.

Q. That will be in the report you bring down this afternoon?

A. I presume that is in the Interstate report.

Q. Annual report?

A. I don't know.

Q. There is also the cost of maintenance or rather repairs and renewals of freight cars?

A. Yes, sir.

Q. Now, you say your road has not divided it between stock cars and other cars?

A. No, and the only figures we could get would be estimates from the men in charge as to the best of their knowledge.

Q. In other words you would take the total car mileage, and divide it into the total item of repairs and renewals of cars?

1199 A. Freight cars separate from passenger cars, yes, sir.

Q. That will be contained in the annual report?

A. I don't know.

Q. It is in this printed annual?

A. Then it will be, yes.

Q. Now, the cost of your general expenses, the only way to divide that would be to divide the total number of car miles or train miles into the total general expenses, items of general expenses?

A. To get the item of what proportion of the general expenses applies to freight?

Q. Yes.

A. Why I don't know how they would.

Q. Divide it per car mile or per train mile?

A. I don't know how you would discriminate between passengers and the freight expenses. For instance, passenger department earnings on some roads are very low in proportion to their expenses. I don't know how they would arrive at that.

Q. At all events, about the only way you could arrive at what comes under the items of general expenses, general office expenses, would be to divide, either on the basis of tonnage, car miles or train miles?

A. Yes, that would appear to me to be fair.

Q. One or the other?

A. Yes.

Q. And those figures are contained in the annual report.

A. Yes, sir.

1200 Q. Now, all the items of operating expenses, those which are under the head of conducting transportation are the longest items, I mean to say the total of conducting transportation?

A. I have not gone into that any and so I do not know what they are.

Q. Well, whatever is shown in the annual report would be correct as a general proposition?

A. Yes, sir.

Q. In conducting the transportation the following are the items:

Passenger train expenses; freight train expenses; station expenses; telegraph expenses; claims for damages; outside agencies; advertising; transportation and traffic superintendence; mileage on ——; café cars; clearing wrecks; operating marine equipment—of course that would not come in there?

A. That is transportation.

Q. But it would not come in in this controversy here?

A. No, we have no boats in that section.

Q. Rent of tracks, yards and terminals, rent of buildings and other property, and miscellaneous expenses.

(Under the general heading of conducting transportation.)

Q. Now, what of those items, except those we have mentioned, would be included, aside from telegraph expenses and claims for damages, as applied to this other traffic?

A. What other expenses?

Q. Yes.

A. Oh, you haven't got in the cost of your property,
1201 bridges and buildings.

Q. I am talking about cost of conducting transportation?

A. Well, I don't know that; I think you have got nearly possibly all of the items, all that I can think of right at the present time in there. It should be, all of them in there.

Q. Now, I will ask you, freight train expenses we have already stated the principal items of expense. The hire of the men and the fuel and the switching in making up of the train, and the terminal expense at Chicago?

A. And the cost of maintenance.

Q. I am not speaking of that now. This is in conducting transportation. The station expenses you say would amount to practically nothing except at the ends where you make up trains and bill out the freight, and that would be included in the estimated cost of loading the cars and receiving the freight at the stations, would it not?

A. Not on live stock.

Q. What other expenses of the stations are there on live stock out there except the ones I have mentioned?

A. Well, the cost of the yards, cost of maintaining the yards, cleaning them out every week or two when the town board orders you to do it, shovel out the manure and stuff.

Q. Well, that is one item, station expenses, that you have already gone over in your previous testimony?

1202 Q. Now, the claims for damages you have stated?

A. Yes, sir.

Q. This live stock in Iowa does not require the maintenance of any outside agencies?

A. We maintain division agents, and traveling freight agents to look after all commodities and they appear to devote the bulk of their attention to looking after live stock and watching what the other fellow is doing with live stock, how many cars he gets, they keep their books in the office.

Q. But that is not outside agencies, that is agents on your own lines?

A. No, it is traveling and division freight agents. We have got

division agents, and traveling agents who go from one station to the other and confers with our agent as to what the other road is getting.

Q. Do you know that is what the term "outside agencies" means in this report?

A. It would be on our own line, interior, but outside agents might be live stock agents, but we have none of that class.

Q. Probably your auditor would have to state what that is in this account. Is it not a fact that a train from Fort Dodge of 25 cars at 23½ cents for 372 miles will produce in revenue $56.40 per car of 24,000 pounds?

A. If they load 24,000 it would, I presume, if the figuring is right, ours do not load that heavy.

Q. That train will yield $1579.20 as a gross revenue,
1203 which is 4.24 cents per mile?

Mr. SEVERANCE: What are you reading from?

Mr. COWAN: I am reading from figures based upon the evidence that is already in as a basis for a question.

Q. Now, do you have any other freight that moves in train load lots that pays you anything approaching that sort of a revenue per car mile; if so, what is it?

A. Packing house products move——

The COURT: First, answer your first question yes or no. Have you any other freight of that kind?

A. Yes, sir.

Q. What is it?

A. Packing house products, a full train of 24 cars which we haul based on 29,000 pounds to the car, which they average, based on the return of 50 per cent., say, of the cars empty.

Q. I am not talking about the return; I am talking about the revenue that pays you?

Mr. LYNDE: I submit the witness has got a right to answer.

The COURT: Yes, let him go on.

A. I base it on a train mile as it governs our annual reports and as called for by the Interstate Commerce Commission, that the train mile means an engine and caboose or engine and empty cars, consequently the return by them of stock and the packing house cars, when you get down to the train mile, must be included in the average earning per train mile, consequently by reason of haul-
1204 ing more tons of freight in the packing house cars and nearly as many cars and having less empty haul on the packing house cars than the others, we create a less number of train miles, consequently our earnings per train mile is far greater on the packing house than on the live cattle.

The COURT: Which pays the most money?

A. The packing house.

Q Well, I mean gross?

A. Packing house, your Honor. Take, for instance, a car of packing house products from Missouri River at 15 tons.

The COURT: I am not talking about a car, I am talking about trains, what he is asking about?

A. I will bring it to trains. There is 24 cars with an average of 15 tons per car; that is, 360 tons at 20 cents a ton is $72. A train of stock of 28 cars at 10 tons per car is 280 tons, at 23½ cents is $65.80, as against $72. Our train miles——

Mr. COWAN:

Q. What is $65.80?

A. The train of—no, taking one car——

Q. You better multiply that by 20?

A. 28 cars——

Q. It would be $58. at 20 cents a hundred?

A. That is what I am getting at, $58 as against $72. Now, that is per train mile coming this way.

Q. 24 cars makes how much a train?

Mr. SEVERANCE: I submit that it is only fair that the
1205 witness be permitted to answer the question.

The COURT: Yes, let him answer the question before you ask another.

A recess was here taken until 2 o'clock of the same day, September 27th, 1905.

1206 JOHN M. DALY resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. Mr. Daly, you said upon your original examination the value of the transportation issued by your company to attendants of live stock for the year ending June 30th, 1903, amounted to $41,423.74. If you have a detailed statement showing the amount, file it as an exhibit to your testimony.

A. I have a detailed statement which shows the number of passengers carried from Chicago to each individual station; the rate of our standard rate of fare for passengers that was in effect at that time and the total amount that they would have paid had they purchased tickets the same as any other passengers. It shows 3719 passengers carried and $41,423.74 expense or revenue that we would have received. That is taken from the individual tickets used in returning.

(The statement produced by the witness is marked Daly Exhibit X, and is attached hereto.)

1206*a* DALY EXHIBIT "X."

Illinois Central Railroad Company.

Statement showing return transportation from Chicago to destination, furnished to attendants of live stock from stations located between the Missouri river and Mississippi river, for the year ended June 30th, 1903, showing the total number of passengers carried to each station, and the value of their transportation (one way from Chicago to destination) based on our tariff rates in effect at that time.

1206*b*–1206*f* Illinois Central Railroad Company.

	From Chicago, Ill.	Number of passes.	Rate.	Amount.
	* * *	* * *	*	*
1206*g*	Grand total.....	3,719	....	$11423.74

1207 Cross-examination by Mr. COWAN:

Q. How many carloads did you ship in from out there?

A. 9976, I think.

Q. From Iowa points?

A. From points in Iowa, southern Minnesota, and South Dakota; points between the Mississippi river and the Missouri river.

Q. Do you keep a statement showing the loaded freight cars east and north and south and west, separately?

A. No, they go together. North and east are all included in one way and the south and west are included in the other, that being the directions that we keep. We keep only the two directions and we dovetail for our branches. They usually run in north or east directions.

Q. Do you keep that by the month?

A. The loaded mileage?

Q. Yes?

A. Yes sir.

Q. Do you keep that separately for divisions west of Chicago?

A. It is, it is taken as the western lines, it will include about from here to those points, including the state of Illinois.

Q. Does that also include from here to Cairo?

A. No sir, that part would not.

Q. It includes the lines over which this live stock moves?

A. Yes, I am pretty sure that is one of our statements.

1208 Q. Will you be kind enough to furnish a statement sh[owing] ing your east and north bound loaded freight cars and y[our] south and west bound loaded freight cars and the same as to empties as provided in items 32, 33, 34 and 35 of the sample of the Commission report that I have in my hand. I will mark it with a pencil on the left hand margin?

A. All right.

Q. From what division point or at what division point does the live stock concentrate which moves from the Missouri river or points in western Iowa?

A. Fort Dodge is our principal consolidating point.

Q. Do you move empties on your through live stock trains as such from Fort Dodge to Chicago?

A. Yes sir.

Q. You have made out a statement once to show what the consists of each train was out of Fort Dodge east bound for the first fifteen days in February, if I recollect correctly and the first fifteen days in October of the year 1904. Have you been able to find a copy of that statement?

A. No sir, if that is the one that was on the terminal charge case, the last session?

Q. Yes?

A. I made four copies of that statement and mailed one to Judge Baxter and one to yourself and one to the Honorable Judge Prouty of the Commission and I think Judge Dickinson of the legal
1209 department in order to complete their files. It left me no office copy. I remember in fact notifying the legal department that that was the only copy we had of the statement.

Q. If you can find that statement I would like for you to furnish it. If you cannot, I would like for you to make a statement again from the same records?

A. The testimony I gave this morning is based on the present conditions, and it would not be fair to use that statement for the reason that last year on that same district that you are speaking of, from Fort Dodge to Waterloo, we spent over half a million dollars in reducing the grades so that at the present time we are hauling from 12 to 20 per cent. more tonnage east bound in our trains than we hauled during the period that that report covers. The present figures given you are much better. We are hauling that much more.

Q. Well, you have not made up a statement, though of that sort, have you?

A. We have taken the performance of the train for the year, winter and summer and in testifying to 780 gross tons of live stock and 867 gross tons of packing house product and 1204 gross tons of dead freight, that covers the entire lines from the Missouri river to Chicago.

Q. Yes, but I would like to have what is an actual move-
1210 ment as it appears out of a prominent division point like Fort Dodge, and if you cannot make the statement, possibly I can get it from Washington. I have sent for it and it may come. Do you recollect whether or not it was shown by this statement, Mr. Daly, that in a train in which you carried live stock for the time mentioned, there were a greater number of loaded cars than in the trains in which live stock were not carried?

A. In a solid train of live stock?

Q. No, just taking all the trains.

A. Oh, I don't think so. No. I think it would run somewhat less than the straight dead freight trains.

Q. You have these train conductors reports which show exactly what it is.

A. Yes sir.

Q. Isn't it a fact that in each particular, the trains which carry dead freight of all sorts and empties, that you also carry live stock practically almost every day?

A. That is true on the branch lines nearly every day. It is true on our main lines nearly every day except Monday or Sunday, the day of the heavy live stock movement. In fact about the only time we get a solid train of stock is on the Sunday movement when the movement is very heavy. Other times there are mostly all stock mixed in with packing house products and oranges or wool or Asiatic freight or dead freight or empties.

1211 Q. When you are moving that stuff out of the Missouri river to the eastward, is that not mainly on schedule trains that leave there? Don't that suffice to carry all that traffic?

A. No. In the winter time when the oranges are moving heavily, the terminal people know about how many cars of packing house products they are going to get and how many cars of Asiatic freight and mixed freight and if they have got enough for two sections, they start one in the afternoon as an extra and then the regular schedule merchandise train known as 52 will start out with the balance, and if there is only a few cars of stock that train will lift the stock and carry it to Fort Dodge where it is consolidated into the solid stock train with the live stock coming from Sioux Falls, Sioux City and Onawa.

Q. Have you a statement showing the number of your cars of the refrigerator type in which fruits and vegetables an- other refrigerator stuff is carried that you move westward loaded into the Missouri river market during the year?

A. We would have no special reports on any of that except that it is called for and we go through the records and the conductors wheelage reports and pick it out, so that on the oranges and the other stuff that went west we have no record of it. I don't know
85 what the cars contained going west. We would not know
1212 except—we would have no way of determining that correctly in my office.

Q. Have you a way of determining how many of those cars you sent out loaded with something?

A. Yes, we could tell the total number of refrigerator cars that went west loaded by taking the conductors' wheelage reports. Every train that has been run west for a year, we would have to go through them and pick them out. They are lettered, Armour or Swift or Cudahy and the Omaha Packing Company and our own.

Q. What percentage of the freight paid to you by the packing houses was freight carried in their cars of their dressed meat and packing house product and what percentage in your cars?

A. Well, that would be somewhat of an average, but still a close average. Our total packing house and fresh meat products average

about 29,000 pounds. Now, then we have had from Missouri river during the year ending June 30th, 1905 288 I. C. refrigerator cars from Sioux City—No, they had 1368 private refrigerator cars. From Sioux City, 412 cars of packing house products in I. C. cars and 437 in private cars. From Cedar Rapids they loaded 507 I. C. cars and only 17 private refrigerator cars. From Waterloo, Iowa, 52 I. C. cars and no private cars. The total is 1259 I. C. cars shipped as against 1822 private refrigerator cars, or 41 per cent. in I. C.

1213 Cars.

Q. Is that I. C. refrigerator cars?

A. I. C. refrigerator cars with the exception of 30 cars in February handled during the emergency in the storm and bad weather when there were no refrigerators there.

Q. Did you take those refrigerator cars from Chicago west?

A. Some of them went from Chicago west and some came to us at Omaha, some were sent by other roads, and some were packing house cars *on* which we did not haul*y* empty to Omaha.

Q. Do you know what percentage of those cars which they loaded out there were cars which you carried westward loaded?

A. The percentage is about, as near as we can get an estimate, taking lots of 500 cars at a time in summer and winter, it is about 48 per cent., that went west empty and 52 per cent. went west loaded.

Q. I am talking though about your own cars that went west.

A. There would be a greater percentage of I. C. cars than therwould be of foreign cars loaded west.

Q. I want to know if you know. If you don't you can say so.

A. I don't know positively but it stands to reason and I am satisfied from looking over the lists of the cars that there were more of the I. C. Cars went west loaded than the foreign cars.

Q. You have not a statement though that you can furnish

1214 t*p* show definitely how many refrigerators you loaded west?

A. The aggregate of all the refrigerators shipped in taking care of dairy and other freight would be considerable of a job to find that out. On the other hand, if you want a statement of the cars shipped for packing house shipments only, I can go up to Sioux City or Omaha and get it from the packing house books or our agent's billing.

Q. Mr. Daly; any further questions, if you will be kind enough just to answer the question we will get along so much faster and get through quicker. I don't say that offensively.

Q. Do you let the packers have any of those cars belonging

1215 to the Illinois Central sent west empty, or send them yourself, west, empty, and get the packing house product and refrigerator stuff?

A. We furnish some cars to them to load east that are hauled west empty, yes, sir.

Q. What proportion of the number which they load, what does that amount to?

A. I cannot tell you.

Q. We were speaking about the coal and the difference in the two

sorts of trains. Are you able to state how much coal an engine consumes in hauling the average stock train from Fort Dodge, Iowa, to Chicago?

A. No, sir, I have not gone into that feature of it.

Q. Are you able to state how much coal would be consumed in hauling a train in which packing house products are carried from Fort Dodge, Iowa, to Chicago?

A. No, sir, we don't charge the coal out that way.

Q. Are you able to state how much coal an engine would consume, starting out from either Sioux City or Omaha and picking up a train of stock by the time it reaches Fort Dodge?

A. No, sir.

Q. Will an engine going out light with a caboose, picking up ten cars at one station and two at another, and so on until it assembles a train load by the time it reaches Fort Dodge, consume the same or more or less coal than if a full train were carried from the

1216 Missouri River to Fort Dodge?

A. I don't know that it would. I have not made any estimates on it and I have not heard of any being made.

Q. What proportion of the live stock carried by you was that which was moved on the 18½ cent rate to Chicago or on the proportional rate to the Mississippi River, east bound?

A. Well, I don't know where that proportional rate takes effect or on what stock it takes effect. Where would the stock originate?

Q. I intended to say packing house product.

A. I have lost your question there, will you please repeat it:

Q. Which is the most expensive part of your road over which to operate a train east bound, the division from the Missouri River to Fort Dodge or from Fort Dodge eastward?

A. That is a rather hard question to answer. There is, on the one hand, where we have to haul 600 tons, and it would cost as much to haul that from Sioux City to Fort Dodge and from Fort Dodge we haul 950 tons and that costs us about as much as 650 on train hire and coal. They are about the same and I would figure one division as against the other, that is, for the physical operation and the coal the same.

Q. The grades are more coming to Fort Dodge than coming from it?

A. Yes, they are, and we have reduced our grades this side of Fort Dodge.

1217 Q. Which is the more expensive over which to operate, the line between Chicago and Sioux City and Omaha or St. Paul?

A. I don't know about the St. Paul grades or the conditions up there or where they get their coal supply.

Q. Your live stock cars rentals were stated at $30,895 on the western lines. How much of that was for loaded mileage and how much for empty mileage?

A. Well, we don't keep the loaded and empty hire mileage separate. It is all lumped in one because we settle at six mills per mile on both. We don't keep it separate.

Q. What is the terminal expense to your road of receiving packing house products or dressed meats out there at the Missouri River points?

A. Omaha we pay the Stock Yards company two dollars per car. We pay the Belt a dollar, making a total of three dollars per car on packing house products there. At Sioux City we pay the Stock Yards company or switching company $1.50 per car.

Q. Do you pay any bridge charge or any bridge rental at Omaha?

A. Not that I have ever seen included in the accounts.

Q. Do you own your own bridge there?

A. We are interested in it.

Q. When you stated that your stock yards depreciated 10 per cent. per annum, did you mean that that 10 per cent. is embraced
1218 in the repairs to the stock yards, or did you mean that the stock yards will play out in ten years?

A. That is the basis, that the stock yards will give out in ten years.

Q. If you keep making repairs, putting on a board or putting in a post, and putting in paving, in the way of repairs, won't you still have about as good a yard at the end of ten years as you did when you started in?

A. I don't know about that. Those figures were furnished by our chief engineer through our superintendent of each division. The Master Bridge Builder, the superintendent of buildings and bridges and the road master on each division. We took it up individually with each of those officers and the figures are derived from the figures furnished by them.

Q. Yourself, you are not acquainted with either the value of the stock yards or the cost of their maintenance?

A. No, sir, I could not testify to that. That is why I explained where I got the figures.

Q. Was the damage claims paid on live stock greater or less last year and the year before than for the year you gave?

A. I did not look into what it was the year before but I don't know of any reason why it should be or why it should be less. I assume it would be about the average. That was furnished by our Freight Claim Agent.

1219 Q. Do you always have freight to fill up your trains, or do you have frequently to run trains with less than their rates tonnage capacity?

A. Frequently trains are run lighter than their assigned rating in both directions, but not to any great extent in the direction of the heavy traffic.

Q. Do you know for certain, and are you able, therefore, to testify that you know——

A. Yes, we keep separate the mileage of trains moving in the direction of the heavy traffic and the percentage of what the engine should haul that it hauled in that direction. Then we keep the mileage in the light direction and what they are hauling and what they should haul, so that we can tell what they haul in each direction.

Q. I was predicating a question. Do you know, yourself, that

you have run engines and cabooses light west bound out of Chicago for the purpose of hauling live stock?

A. Yes, we do, to haul back live stock and other traffic.

Q. The monthly statement which you are going to furnish of the east and west bound traffic, will be a definite statement of what the direction of the volume of the traffic is?

A. Yes, sir.

Q. 70 per cent. of your live stock you state reaches Chicago on Sunday?

A. 70 per cent. of the live stock from Iowa fields.

1220 Q. Isn't it a fact that on Sunday you do not operate your local trains or your through trains that leave either Chicago or the Missouri River? Those trains don't run on Sunday,—I mean to say that they don't leave on Sunday?

A. Sunday, in winter is one of our busiest days. They run as extras and every engine we have got, way-freight engines and everything else. On every division where we don't handle stock it is the same as on the Iowa lines.

Q. Many of the roads don't run their local roads on Sunday, do they?

A. Oh, your way-freight trains don't run on Sunday anywhere. Your merchandise pick-up trains don't run.

Q. How many of them have you in operation on the line between Chicago and the Missouri River?

A. We have got 14 or 16.

Q. You are enabled to use your engines that would run those trains, for the purpose of carrying live stock?

A. Not to any extent. The engines on the branch lines are too small and too light.

Q. I am not speaking of the branch lines.

A. I include those in my answer. The main line engines—we always assign our smallest engines for way-freight service for the reason that they only handle a few cars and it would not pay us to put a big engine in, and, in addition to that, a heavy engine

1221 should not be passing back and forth on side tracks so they are not suitable engines for live stock.

Q. Isn't it a fact that the live stock traffic coming in volumes that furnishes you train loads makes it especially desirable traffic to handle?

A. In train loads I assume—I don't know about the desirability of it, personally. I would not testify to that. I don't think so.

Q. You don't think that the live stock furnishes you a desirable traffic?

A. No, sir, I don't, personally. Our people may, some of them may think otherwise, but I do not.

Q. There would be little reason, then, to have your solicitors and agents out engaged in the business of trying to get the traffic if they entertained your views?

A. No, they may think differently. Evidently they do.

Q. Did you state the total receipts from the total live stock traffic of your road.

A. No, sir, I don't know what that is.
Q. Or from the western lines?
A. Just the western lines.
Q. Did you state that?
A. Yes, sir, $433,000.
Q. How is that?
A. $433,000 for the points covered between the Missouri and the Mississippi river to Chicago.

Q. You gave a statement of one voucher that you selected
1222 with reference to cleaning cars. Was that paid?
A. Yes, sir.

Q. Do you clean your cars, to any extent, in the winter?
A. Well, we aim to clean cars—we do clean cars about every fourth trip.
Q. How often does that make it?
A. About every fourth trip out of Chicago, every fourth load they get.
Q. About how often, then, is a car cleaned in point of time, once a week or once a month?
A. No, it would not be once in probably two months. Six weeks to two months.
Q. Have you a contract for cleaning cars?
A. No, sir, our section foreman cleans them and the cleaning is distributed over two or three divisions.
Q. You do not clean them where they are frozen, do you?
A. I don't know. I only *only* from hearsay from the superintendents speaking of the trouble that they have had with them.
Q. Are cattle bedded, to your knowledge, in sand, in shipments from Iowa over your line?
A. Some of them. That is my understanding from the investigation made.
Q. Is it not a fact that the great percentage of them are bedded with straw or hay?
A. Well, there is straw and hay bedding there, and I assume that there is a certain number of them that are bedded with that.

1223 Q. What estimate did you put upon the weight of a live stock car and bedding?
A. Eighteen tons, gross.
Q. Is that correct?
A. Well, our stock cars average in light weight about 33,000 pounds.
Q. Which cars are those which average that? Is that the stencil weight on the car?
A. That is the stencil weight as it appears in the historical record as it is in the office of our superintendent of motive power, and I went and examined them personally. Car No. 32,507 is 33,100 pounds. 32,508 is 33,000 pounds. 32,509 is 32,800 pounds; the next is 33,000; the next 33,000 pounds; 32,800, 32,700, 32,800, 32,600, 32,600, 33,000 and 32,600 pounds. Those are cars numbered from 32,507 to 32,519 inclusive. That is the light weight as they come from the manufacturer.

Q. Those are the new cars that you are having built?
A. No, we have not built any stock cars for some time.
Q. Well, that you bought, then?
A. Bought, yes, sir.
Q. Is it not a fact that those are very much heavier cars than the average 36-foot cars that are in use?
A. I don't think so. They may be. I am not saying they are not, but those cars have no overhead hay storage; they have no racks in them for the hay and they have no troughs in them,
1224 all of which must weigh something in addition to this car that is 36-foot long.
Q. How much do you count the bedding to weigh?
A. Take it on the average, it is estimated by our superintendents from here west, at about a ton and a half or two tons. Two tons, as a rule, they say, is a fair estimate for the year round.
Q. Have you examined, yourself, to find out the weight and determine whether that is true or not?
A. No, sir, I did not.
Q. That is what you have understood it was, but you don't pretend yourself to know?
A. Well, those are the figures given to me on the direct inquiry made to the officers as to the weight of those cars.
Q. Do you mean that is the weight of the bedding when they have been cleaned out and bedded fresh, or after a shipment comes in?
A. No, sir, it is taking it on the average after accumulating and after being cleaned and the sand put in the car.
Q. Does that apply to hay bedding as well — to sand?
A. It applies to the whole thing, according to the inquiry and their replies.
Q. Is it not a fact that with the great majority of your cars, the stenciled weight ranges around 31,500 and the like?
A. Nearly all of our cars are 36-foot 30-ton cars. 840
1225 of them out of the 900. Smaller cars are assigned to brick and such stuff, and very seldom get into Iowa, because we put our best cars into that territory.
Q. I am talking about the 36-foot cars, if they are not stenciled 31,500, a great many of them?
A. There may be some few of the first cars built, but not the standard cars. Our next cars will be much heavier than these.
Q. Why do you have them made 30 tons when the live stock never runs over 13 tons or 14 tons at the outside?
A. For two or three reasons. The first is that the small 14-ton car, if you put it into a heavy train of grain, coal or lumber, with the heavy trains that we are pulling now, you tear it to pieces. Again, no car should be built with journals that will not carry 30,000 pounds, for the reason that we use these stock cars frequently in hauling steel rails west from the rolling mills. We want to use them in the lumber business, and I assume that one reason why our cars are much heavier than those for the Northwestern, is that we have got to have a stronger car than they for the reason

that we handle considerable lumber shipments. Our new specifications being drawn now provide for steel plates in the end of the car, and consequently they are no doubt a heavier car and a more expensive car.

Q. In the packing house products and dressed meat trains
1226 that you mention, how many of the cars were fresh meat and how many packing house product?

A. I think about 500 cars out of the 3100 that contained fresh meat, mixed fresh meat and packing house products. On the other 2600, I think that would run straight packing house product.

Q. Somebody else was getting fresh meat, then?

A. We don't get much of it.

Q. The fresh meat furnishes a larger proportion of the traffic in carloads, furnishes a much larger number of cars?

A. I don't know on that. I don't know what the other roads are hauling of it. We have a fresh meat train but we have not run it more than two or three times this year.

Q. You could not handle fresh meat, anyway, from these competing points running on the schedule that you do?

A. No, sir.

Q. Your statements have been based practically on the packing house products?

A. No, I take the total, fresh meat and packing house product and lump them al- together; about 16 per cent. is fresh meat and 84 per cent. is packing house product.

Q. Your opinion is that the dressed meat ought to take as high a rate as the live stock?

A. Based on the cost of handling it, I don't see much difference in it.

1227 Q. What do you pay for the dressed meat and packing house product deliveries at Chicago?

A. It costs us $3.00 a car. We give it to the Chicago Junction, the Stock Yards company at Hawthorne.

Q. Three dollars a car to what point?

A. That is to the connecting lines to the east. Now and then we get some little for South Chicago or Kensington, and that is on our own line, and they give us that to avoid a switching charge here. That is a very small item, however.

Q. There is not much of the product that you carry that stops for local consumption in Chicago, is there?

A. No, sir, very little.

Q. That that you bring to Chicago goes to some eastern line, more than is stopped here?

A. Yes, and it will go to Hammond. I don't know whether it is Union Stock Yards or not but I assume a good portion of it goes east.

Q. Who keeps for the packers here a record which will show absolutely the movements, the portion thereof which was going to eastern lines and the portion which stops in Chicago?

A. I think Mr. Richard Fitzgerald, superintendent of the Chi-

cago Junction, would have that. He has got car records on that and he may be able to determine which is which.

Q. Which is more profitable for you to handle, is it more profitable for you to handle your business in the cars which you
1228 get from the private car lines at six mills per mile, or to handle it in the cars which you buy or build?

A. On the stock business I never recommended building any additional stock cars. I think I would rather pay six mills for the use of private stock cars than to build our own cars.

Q. Does the Stock Car company make the repairs incident to ordinary wear and tear?

A. For making repairs under the Master Car Builders rules, which means all due to age or natural wear and tear, they are responsible for. Anything that is not sue to natural wear and tear, such as a wrecked car, or a slid wheel, that the road would have to make good themselves.

Q. Whatever is properly due to negligence they don't have to repair, and what is due to ordinary care in the use of it, they do have to repair that?

A. That is right.

Q. And they have to repair for ordinary depreciation?

A. Yes, sir.

Q. Six mills is supposed to cover that, at least, so far as the railroad is concerned, it does cover it?

A. Yes, that is what we pay for.

Q. Do you know how it came that the Coal Company charged you so much for cleaning those two cars down there?

A. Why, I don't know. I have no idea, but I am satisfied that the charge is legitimate. I vouchered them for several years before that. I know Mr. Wyatt would not tolerate anything but
1229 what is fair.

Q. What was in the car?

A. Manure and bedding and stuff frozen in.

Q. Oh, frozen in?

A. Why, yes; I don't want to misrepresent anything. I showed you some that he cleaned for 37 cents in summer, and others in the winter time that got away up, and I think, consequently, it was due to the frozen condition of the cars.

Q. Have you a statement that shows absolutely what it cost you in gross for the cleaning of stock cars during the year?

A. No, sir, that I got from our superintendent at Chicago that watches out for the cleaning of the cars and about how often they clean them.

Q. Unless you had a statement showing the total cost to your company of cleaning, the total cost of cleaning your company's cars for a year in order that you might divide the total number of cars into that, you could not tell what it costs per car?

A. Nothing but an estimate. It don't cost us, though, that high.

Q. Oh, I know it don't cost you that.

A. It don't cost us $6.00 a car; it does not cost the company,

when they clean them, $6.00 a car. We might take and put a car that is frozen, we would take a steam pipe and run it in underneath that and then take a live engine and steam it out, but of
1230 course in that we would only count the section man's time and not the cost of the engine, while that is being done, but it would still reduce that cost if we had enough cars. You had that statement this noon in regard to which we were figuring on, if you want that.

Q. How is that?

A. This morning, about the revenue from a car or train of packing house product against a train of stock, and I stated that I thought the packing house was better than the stock, and that was not completed at the time of adjournment.

Q. Well, I don't care to take up the time of the court in figuring. I was asking for some certain points in regard to relative cost which can be figured in argument or at any other time. That is all.

The COURT: Call the next witness.

Mr. SEVERANCE: I want to ask him some questions.

Q. Did you make that computation this noon?

A. Yes, sir.

Q. Well, just give it.

A. The average number of cars of live stock hauled per train from Missouri River points to Chicago is 28 cents. The average number of tons per car is 20, hence the total tons hauled per train is 560. At 23½ that equals $1316 for the train of stock from Missouri River points to Chicago. The distance is quoted at 500
1231 miles this way, and as 86 per cent. of the cars move back empty, 86 per cent. of 500 miles returned is 430, added to the 500 miles gives you 900 train miles to earn $1316, or $1.41 per train mile.

On the packing house products we have 24 cars, 4 less than the stock, with an average of 29,000 pounds per car, at 20 cents per hundred equals $1392. The distance is 550 miles for the packing house this way, loaded, is about 50 per cent.—as about 50 per cent. of the cars go back empty, it creates 250 miles additional in the opposite direction, or a total of 750 train miles. That divided into $1392, gross receipts, gives an average of $1.85 per train mile.

Q. As against how much for the live stock?

A. As against $1.41.

The COURT:

Q. How is it if you leave out the return cars?

A. I have included them.

Q. What were your figures before you dealt with that feature of it?

A. On the live stock there was 86 per cent. that went back empty.

Q. What is the amount of the figures of the two trains?

A. $1316 on the live stock, and $1392 on the packing house.

Mr. SEVERANCE:

Q. Now, this morning Mr. Cowan started in with a list
1232 of questions on the comparative cost of hauling two trains of equal size 20 or 25 miles an hour, as bearing upon the comparative profit, I assume, the comparative profit of stock trains run at a high rate of speed, and the packing house train run at a lower rate of speed. Now, he eliminated from that proposition the question as to the amount of tonnage that can be hauled at these varying rates of speed, did *you* not?

A. They were both to haul the same number of tons.

Q. As a matter of fact you cannot haul the same tonnage at 25 miles an hour that you can at 20 miles an hour?

A. It is conceded that we cannot. We make a reduction which we have clearly defined in our time cards.

The COURT:

Q. Well, is that actually true? If the loads weighed a little heavier, it would take more coal, wouldn't it, up to a certain limit of speed?

A. No, the gross, with the same gross weight in each car. The train run at 25 miles per hour cannot haul as great a tonnage as the train run at 20 miles an hour, of the same cars, and the question this morning was: "Take a train of 25 loaded cars of stock, and *load* it at 25 miles per hour, and take another train of 25 cars loaded with stock, and run them at 20 miles per hour. What
1233 difference would there be in that case?" It would cost more to run the fast train if we undertook to haul the same tonnage on both, for the reason that on our schedules here where we run any number of that kind of trains, it states, "Rating A is for manifest and stock, perishable freight. B. is for dead freight. Trains required to make schedule as shown below will have special rating as follows: On a five-hour schedule, 720 tons; on a four-hour schedule, 600 tons; 400-class engines on a five-hour schedule, 800 tons; on a four-hour schedule, 700 tons," and different ones. On the Champaign district, that is, our schedule is 620 on a four-hour schedule.

Mr. SEVERANCE:

Q. Then, as a practical question, these comparisons that Mr. Cowan was asking you were absolutely worthless for any purpose where you eliminate this question of additional load that can be carried at the lower rate of speed?

A. No, I think he has asked some very intelligent questions.

Q. No, I mean on that particular question. He asks a great many intelligent questions, of course, he is an intelligent man. I mean on that one proposition. You don't haul the same load 25 miles an hour that you do at 20 miles an hour?

A. We could not. Our ratings would not be correct if we did that. It is invariably understood when we run a train special, we
1234 reduce its rating.

The COURT:

Q. Suppose you put a smaller load on both of them?

A. You reduce them both below what they should haul and then there would be no profit in the case either way.

Mr. SEVERANCE:

Q. That would not be an economical operation of a railroad, would it?

A. No, there would be no additional cost on either one, I suppose.

Q. That is, you could run an engine without any train behind it 25 miles an hour as cheap as you could 20?

A. Yes, or we could pick up 10 or 15 cars of stock and run 25 miles an hour, and another train at 20, and I don't think it would be possible to determine any increase of expenses.

Q. In the economical operation of a railroad, it requires you to haul all that you can with the power at the rate of speed which is required?

A. We have got to do that.

Q. That varies, as you increase the speed you lower the rating?

A. Yes, sir.

The COURT: The very fact that they run cars back empty shows that they don't always run them up to their rating.

Mr. SEVERANCE: I am not claiming that they do.

The COURT: Well, you do the business as best you can do it. If you get a full load you haul it.

1235 Mr. SEVERANCE: I understand that we are trying a specific question here.

The COURT: You take a great deal of time with the witnesses proving things which will cut no figure whatever when you come to the argument of that question.

Mr. SEVERANCE: That is what I had in mind when I heard Mr. Cowan's questions.

The COURT: There is another thing, if he saves five hours on the road to Chicago, don't that make the wages a good deal less?

A. The same wages?

Q. Well, you save five hours?

A. A train running a hundred miles, if they make that hundred miles in ten hours, they get a hundred miles for it, and if it takes them ten hours and 35 minutes, they get a hundred and ten miles for it. In other words, we guarantee that for every hour they are in service we will pay them equal to ten miles.

Q. Is that economical?

A. That is what the brotherhood demands. They insist on that themselves and we haven't anything to do with it.

Mr. SEVERANCE: I suppose it is just the same as Judges and District Attorneys, and everybody, that they are paid so much a day whether they hold court or not.

Mr. COWAN:

Q. Is it not a fact that in the 25-car comparison that I make,
1236 that I came below the rating of your engines in the number of cars per train by three cars?

A. Yes, sir.

Q. Isn't it a fact that in both cases I named a lower rate of speed than your schedule, Fort Dodge to Chicago, 25 hours and 20 hours? Didn't I name a less mileage per hour than your schedule?

A. Yes, you took from Ft. Dodge here as against from the Missouri River, 137 miles less.

Q. When you consider that, then, is not your answer to the Judge, that if you ran less than your capacity of your engine, that it won't make any difference in the cost whether you run one fast and the other slow? Don't that apply in the very case that I have put?

A. I think I made a wrong statement there. I thought your question was one at the rate of 20 miles an hour and the other at the rate of 25.

Q. No, one in 25 hours and the other in 20?

Mr. SEVERANCE: No, it was 25 miles an hour and 20 miles an hour.

The COURT: A twenty-hour trip and a twenty-five-hour trip?

A. There would not be any difference in that cost, if I understood you that way.

Mr. SEVERANCE: I did not understand the question that way.

The WITNESS: I was figuring the rate of speed instead of the hours. I would not make any difference in the cost.

1237 Mr. COWAN:

Q. In the case where you make your figures, what is the difference in the total amount of tonnage on which you figure in the one train, and the total amount of tonnage in the other, where you figure the earnings of the packing house train and the live stock train? What is the difference in the gross tonnage?

A. 44,000 pounds for the car, for refrigerators, and 29,000 pounds of contents. 73,000 pounds per car. The live stock, the gross weight, 1,792,000 pounds, and the packing house product would be, 2,752,000 pounds.

Q. A million pounds more in one case than in the other?

A. The car and contents.

Q. If you take just the going from the Missouri River to Chicago, in one case you carry 700 tons gross, and in the other case, 1,752,000 tons?

A. 1,750,000 tons?

Q. Yes.

A. No, we could not haul that, not gross tons.

Q. You have got 73 tons to the car?

A. No, no 73,000 pounds. Not 73 tons.

1237*a* (DALY, COMPL'TS' GEN'L EX. 2.)

I. C. R. R.

Loaded and Empty Mileage on Cherokee Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	151,281	59,299
August	220,292	94,768
September	266,935	77,133
October	207,703	63,542
November	137,259	73,834
December	192,846	53,960
January, 1905	190,421	40,281
February	187,325	34,854
March	235,578	34,715
April	159,831	67,701
May	167,318	72,934
June	175,505	64,245
Total	2,292,294	737,266
South and west.		
July, 1904	171,560	58,720
August	199,320	99,440
September	216,305	95,645
October	198,902	72,937
November	176,035	28,156
December	174,144	58,245
January, 1905	150,645	82,427
February	136,342	96,289
March	194,774	115,912
April	153,881	53,236
May	177,372	55,461
June	175,518	55,276
Total	2,124,798	871,744

Chicago, September 29th, 1905.

J. M. DALEY.

1237*b* I. C. R. R.

Loaded and Empty Mileage on Omaha Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	331,400	207,673
August	330,679	368,634
September	428,529	207,702
October	497,693	188,931
November	459,238	243,959
December	643,286	159,069
January, 1905	559,878	108,607
February	432,649	96,162
March	638,031	113,851
April	493,991	242,977
May	353,599	290,106
June	390,084	202,253
Total	5,559,057	2,429,924
South and west.		
July, 1904	377,503	147,254
August	438,679	190,400
September	438,265	226,030
October	504,760	261,448
November	455,338	146,524
December	389,440	147,417
January, 1905	369,515	226,701
February	336,834	179,425
March	478,633	287,169
April	384,468	133,053
May	424,103	160,483
June	422,136	156,760
Total	5,019,674	2,262,664

Chicago, September 29th, 1905.

1237c I. C. R. R.

Loaded and Empty Mileage on Dubuque Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	658,542	389,167
August	640,441	615,145
September	813,242	354,030
October	905,898	344,334
November	851,001	429,017
December	1,070,307	294,598
January, 1905	1,104,452	244,651
February	846,588	206,237
March	1,128,630	271,675
April	871,543	312,140
May	726,219	440,280
June	693,815	292,259
Total	10,310,678	4,193,533
South and west.		
July, 1904	804,208	236,184
August	766,839	218,400
September	864,463	264,834
October	1,002,294	286,981
November	865,805	237,732
December	767,884	282,853
January, 1905	748,842	585,320
February	673,638	319,021
March	852,167	578,995
April	772,132	271,927
May	794,203	268,516
June	772,303	254,862
Total	9,684,778	3,805,625

Chicago, September 29th, 1905.

1237*d* I. C. R. R.

Loaded and Empty Mileage on Freeport Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	333,635	59,397
August	378,396	78,743
September	394,390	55,093
October	450,656	50,946
November	499,563	66,890
December	593,730	50,151
January, 1905	600,182	51,125
February	468,545	57,129
March	615,873	96,573
April	476,878	93,397
May	398,481	92,532
June	408,854	83,299
Total	5,619,183	835,275
South and west.		
July, 1904	351,793	98,845
August	398,568	124,885
September	360,569	141,901
October	389,869	150,756
November	361,871	203,792
December	340,292	267,810
January, 1905	317,003	379,376
February	306,401	256,730
March	389,094	321,997
April	371,049	161,073
May	372,474	167,200
June	548,385	183,497
Total	4,507,368	2,457,862

Chicago, September 29th, 1905.

1238 SEPTEMBER 27, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon F. L. EATON, called as a witness on behalf of the Sioux City Stock Yards Company, being first duly sworn, testified as follows:

Direct examination by Mr. MILCHRIST:

Q. State your name and the position you occupy in the Sioux City Stock Yards Company?

A. My name is F. L. Eaton, and I am president and General Manager of the Sioux City Stock Yards Company.

Q. How long have you been connected with said company?

A. About ten years.

Q. What is the nature of your duties in your present position?

A. I have general charge of the business of the company.

Q. Have you prepared a statement of the rates from a number of important shipping points in western Iowa to Sioux City and to Chicago, Illinois, and the distance.

A. I have prepared a table showing the number of statio- in northwestern Iowa to Sioux City and Chicago. Those stations
1239 are selected with the idea of showing one or more stations on each of the railroads and the different divisions of the railroad. The same facts which are shown by these stations would be shown by the complete tariff of the whole country further east. On the margin of each sheet I have noted the railroad tariffs from which the figures are taken.

(The said statement so produced by the witness is in the words and figures following, to wit, and is marked "Eaton Exhibit A."

C. M. & St. P. Railway, —— Division.

From	To	Rates. In cents per 100 pounds. Miles.	Cattle.	Hogs.
Hornick, Iowa (S. C. & D. Div.).	Sioux City	26	7.11	7.33
	Omaha			
	St. Paul			
	Chicago	491	23.5	23.5
Mapleton, Iowa (S. C. & D. Div.)	Sioux City	48	8.68	8.67
	Omaha			
	St. Paul			
	Chicago	469	23.5	23.5
Manilla, Iowa (Ch'go & Co. B. Div.)	Sioux City	90	10.79	10.64
	Omaha			
	St. Paul			
1240	Chicago	427	23.5	23.5
Coon Rapids, Iowa (Ch'go & Co. B. Div.)	Sioux City	122	12.37	11.8
	Omaha			
	St. Paul			
	Chicago	395	23.5	23.5
Inwood, Iowa (I. & D. Div.).	Sioux City	75	10	10.16
	Omaha			
	St. Paul			
	Chicago	541	25	26
Sanborn, Iowa (I. & D. Div.)	Sioux City	98	11.32	10.96
	Omaha			
	St. Paul			
	Chicago	498	24	24
Spencer, Iowa (I. & D. Div.).	Sioux City	123	12.37	11.8
	Omaha			
	St. Paul			
	Chicago	473	23.5	23.5

1241 Chicago & Northwestern Railway, —— Division.

From	To	Miles.	Rates. In cents per 100 pounds. Cattle.	Hogs.
Correctionville, Iowa	Sioux City	49	8.68	8.67
	Omaha			
	St. Paul			
	Chicago	473	23.5	23.5
Shaller, Iowa	Sioux City	78	10.26	10.32
	Omaha			
	St. Paul			
	Chicago	444	23.5	23.5
Lake View, Iowa (S. C. Div.)	Sioux City	103	11.53	11.12
	Omaha			
	St. Paul			
	Chicago	419	23.5	23.5
Castana, Iowa (S. C. Div.)	Sioux City	49	8.68	8.67
	Omaha			
	St. Paul	469	23.5	23.5
	Chicago			
Battle Creek, Iowa (S. C. Div.)	Sioux City	73	10	10.16
	Omaha			
	St. Paul			
	Chicago	445	23.5	23.5
Wall Lake, Iowa (S. C. Div.)	Sioux City	101	11.53	11.12
	Omaha			
	St. Paul			
	Chicago	416	23.5	23.5
Dayton, Iowa (S. C. Div.)	Sioux City	154	13.63	13
	Omaha			
	St. Paul			
	St. Paul			
	Chicago	363	23.5	23.5
Laurens, Iowa (S. C. Div.)	Sioux City	107	11.74	11.28
	Omaha			
	St. Paul			
1242	Chicago	420	23.5	23.5
Onawa, Iowa (S. C. Div.)	Sioux City	37	7.89	8
	Omaha			
	St. Paul			
	Chicago	480	23.5	23.5
Mondamin, Iowa (S. C. Div.)	Sioux City	59	9.21	9.33
	Omaha			
	St. Paul			
	Chicago	484	23.5	23.5
Missouri Valley, Iowa, (S. C. Div.)	Sioux City	76	10.26	10.32
	Omaha			
	St. Paul			
	Chicago	467	23.5	23.5

1243 Illinois Central Railroad, Cherokee Division.

From	To	Miles.	Rates. In cents per 100 pounds. Cattle.	Hogs.
Le Mars, Iowa	Sioux City	25	6.71	7
	Omaha			
	St Paul			
	Chicago	485	25	25.3
Cherokee, Iowa	Sioux City	59	9.21	9.33
	Omaha			
	St. Paul			
	Chicago	451	23.5	23.5
Fonda, Iowa	Sioux City	100	11.32	10.96
	Omaha			
	St. Paul			
	Chicago	410	23.5	23.5
Ft. Dodge, Iowa	Sioux City	135	12.79	12.2
	Omaha			
	St. Paul			
	Chicago	375	23.5	23.5
Smithland, Iowa	Sioux City	103	11.83	11.12
	Omaha			
	St. Paul			
	Chicago	495	23.5	23.5
Washta, Iowa	Sioux City	75	10	10.16
	Omaha			
	St. Paul			
	Chicago	467	23.5	23.5

1244 Mr. MILCHRIST: I offer that in evidence.

Q. Have you prepared a statement of the rates on live stock from the number of shipping points north and west of Sioux City, showing the rates to Sioux City and *Chica* Chicago, and also the distances? If so, please produce the statement?

A. I have prepared a list of the stations, north, north-west and west of Sioux City, which is prepared the same as the other list and with the same idea with notations on the margin in the same way.

(The statement so produced by the witness is mar-ed Eaton Exhibit B, and is in the words and figures following, to wit.)

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1245

RATES EXHIBIT "D".

C. M. & ST. P. RAILWAY

_____DIVISION

FROM	TO		RATES In cents per 100 pounds	
		MILES	CATTLE	HOGS
Hawarden, Ia.	Sioux City	46	8.68	8.67
(S.C & D.Div)	Omaha			
	St.Paul			
	Chicago	563	25	24
Canton, S. D.	Sioux City	71	11	11.5
(I & D.Div)	Omaha			
	St.Paul			
	Chicago	560	28	28
Egan, S.D.	Sioux City	125	14.5	15
(S.M.Div)	Omaha			
	St.Paul			
	Chicago	550	30	32
Madison, S.D.	Sioux City	130	18	21
(S.M.Div)	Omaha			
	St.Paul			
	Chicago	565	31	32
Oldham, S.D.	Sioux City	179	20	22.5
(S.M.Div)	Omaha			
	St.Paul			
	Chicago	602	35	36
Bristol, S.D.	Sioux City	250	24	27
(H & D.Div)	Omaha			
	St.Paul			
	Chicago	563	35	36
Harlem, N.D.	Sioux City	319	27.5	30.5
(H & D.Div)	Omaha			
	StPaul			
	Chicago	729	37	40
Lennox, S.D.	Sioux City	87	13.5	15.25
(I & D.Div)	Omaha			
	St.Paul			
	Chicago	576	27	30

1246.

Menno, S. D.	Sioux City	100	16	17.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	616	29	32
Alexandria, S.D.	Sioux City	137	17.5	19.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	626	30	32.5
Elk Point, S.D.	Sioux City	21	7.11	7.33
	Omaha			
(S.C & D.Div)	St.Paul			
	Chicago	536	23	24
Yankton, S.D.	Sioux City	61	11	14.5
	Omaha			
(S.C & D.Div)	St.Paul			
	Chicago	578	29	31
Tyndall, S.D.	Sioux City	101	15.5	17.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	606	31	36
Scotland, S.D.	Sioux City	90	15.5	17.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	607	30	34
Mitchell, S.D.	Sioux City	138	18	21
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	639	32	34
Aberdeen, S.D.	Sioux City	336	25	28
	Omaha			
(J.R.Div)	St.Paul			
	Chicago	702	38	42.5
Orient, S.D.	Sioux City	349	26	29
	Omaha			
(J.R.Div)	St.Paul			
	Chicago	775	39	44
Eureka, S.D.	Sioux City	334	27	32
	Omaha			
(J. R. Div)	St.Paul			
	Chicago	766	42	44

Evarts, S. D.	Sioux City	363	28	33.5
	Omaha			
(J, R. Div)	St.Paul			
	Chicago	789	43.5	48
Edgeley, N.D.	Sioux City	330	28	31.5
	Omaha			
(J. R. Div)	St.Paul			
	Chicago	766	39.5	42.5

CHICAGO & NORTHWESTERN RAILWAY

DIVISION.

FROM	TO	MILES	RATES In cents per 100 pounds CATTLE	HOGS
Pierre, S. D.	Sioux City	329	26	26	32
	Omaha			
(D. Div)	St.Paul			
	Chicago	760	43.5	48
Huron, S. D.	Sioux City	210	21.5	24
	Omaha			
(D. Div)	St.Paul			
	Chicago	645	34	40
Volga, S.D.	Sioux City	239	20	24
	Omaha			
(D.Div)	St.Paul			
	Chicago	560	32.5	36
Brookings,S.D.	Sioux City	246	20	23
	Omaha			
(D.Div)	St.Paul			
	Chicago	574	32	35.5
Gettysburg, S.D	Sioux City	326	26	30
	Omaha			
(D. Div)	St.Paul			
	Chicago	739	42	45
Redfield, S.D.	Sioux City	251	23	26
	Omaha			
(D. Div)	St.Paul			
	Chicago			
Watertown, S.D.	Sioux City	287	22.5	25.3
	Omaha			
(H. Div)	St.Paul			
	Chicago	502	32.5	36.5
Oaks, N.D.	Sioux City	346	27	32.6
	Omaha			
	St.Paul			
	Chicago	789	39	42.5

Geneva, S.D.	Sioux City	155	18	21
	Omaha St.Paul Chicago	601	30	3 2
Alcester, S.D.	Sioux City	76	11	11.0
	Omaha St.Paul Chicago	522	28	26

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CHICAGO & NORTHWESTERN RAILWAY

NEBRASKA & WYOMING DIVISION.

FROM	TO	MILES	RATES In cents per 100 pounds CATTLE	HOGS
Pierce, Neb.	Sioux City Omaha St.Paul	88	13.5	17.5
	Chicago	600	31	37
Winnetoon, Neb.	Sioux City Omaha St.Paul	120	15	19
	Chicago	632	31	37
Spencer, Neb.	Sioux City Omaha St.Paul	174	22	25
	Chicago	686	37	41
Bonesteel, S.D.	Sioux City Omaha St.Paul	194	22	25
	Chicago	706	40	44
Oakdale, Neb.	Sioux City Omaha St.Paul	106	15	20
	Chicago	618	31.5	37
O'Neil, Neb.	Sioux City Omaha St.Paul	151	16.5	22
	Chicago	660	33	37

1251

C. ST. P. M & O RAILWAY

DIVISION.

FROM	TO	MILES	RATES In cents, per 100 pounds CATTLE	HOGS
Salem, S.D.	Sioux City	193	16	18
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	639	29	32
Luverne, Minn.	Sioux City	124	12 1/2	15
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	570	25	26
	Via Alton			
Worthington, Minn.	Sioux City	91	12 1/2	14 1/2
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	537	25	26
Sibley, Iowa	Sioux City	74	10	10.16
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	520	25	25
Alton, Iowa	Sioux City	41	8.29	8.33
	Omaha			
(M & I. Div)	St.Paul			
	Chicago	487	24 1/2	23 1/2
Emerson, Neb.	Sioux City	29	9.5	11
	Omaha			
(N Div)	St.Paul			
	Chicago	541	29	33
Wayne, Neb.	Sioux City	48	11.4	14
	Omaha			
(N. Div)	St.Paul			
	Chicago	560	29.5	34.5
Norfolk, Neb.	Sioux City	76	13.30	17.5
	Omaha			
	St.Paul			
	Chicago	588	30.5	37

1253

Hartington,Neb. (N. Div)	Sioux City	72	12.4	14
	Omaha			
	St.Paul			
	Chicago	584	29	36
Bloomfield, Neb. (N. Div)	Sioux City	91	13.3	16
	Omaha			
	St.Paul			
	Chicago	603	31.5	37
Pender,Neb. (N. Div)	Sioux City	41	11.9	13
	Omaha			
	St.Paul			
	Chicago	541	30	34

1259.

GREAT NORTHERN RAILWAY

WILLMAR & SIOUX FALLS DIVISION.

FROM	TO	MILES	RATES In cents, per 100 pounds CATTLE	HOGS
Sioux Center, Iowa	Sioux City Omaha St.Paul Chicago, via Soo City	44 554	8.29 25	8.33 24
Garretson,S.D.	Sioux City Omaha St.Paul Chicago,via S.C. "Mills	97 607 544	12.5 25	15 30
Savage, Neb.	Sioux City Omaha St.Paul Chicago	101 611	15 31	20 37
O'Neill,Neb.	Sioux City Omaha St.Paul Chicago	150 640	16.5 33	22 37

1254 Mr. MILCHRIST: We offer this as Exhibit B in evidence.

Q. State whether the rates shown in Exhibit A introduced in evidence are favorable or unfavorable to Sioux City market as compared with Chicago?

A. We think they are unfavorable to Sioux City markets because the rates for the distance into Sioux City is so much more in comparison than the rates from the same stations to Chicago.

Q. State what effect if any the rates shown in your exhibit B, would have upon the Sioux City market?

A. The second exhibit for territory north and west of Sioux City shows that the rates from stations in that territory to Chicago are much less proportionately than the rates to Sioux City.

Q. The stations shown on Exhibit B are confined largely to South Dakota, Minnesota, and northern Iowa?

A. And Nebraska.

Q. Have you any knowledge of the relative service rendered by the railroads from the territory in western Iowa, to Sioux City and to Chicago on live stock? If so, please state what the character of the service is which is usually rendered to each point?

A. In the portion of the territory, in one portion of the territory the service is about equal to one point or to the other. In a portion particularly north of Sioux City, the service is much better
1255 to Chicago than it is to Sioux City. The main lines of the roads run east and west and the trains start out to reach Chicago in time for the Chicago market without reference to intermediate markets.

Then for a part of northwestern Iowa trains coming to Sioux City must move a little west and south and we have very poor service all through that section.

Q. State whether or not in your opinion as the manager of the stock yards, the question of service rendered on live stock is of importance in determining the market which the owner of the live stock may choose in which to sell his products?

A. In my opinion it is of a great deal of importance. The shipper wants a train that keeps going. The question of shrinkage is a question that enters largely with the shipper in determining the market he is going to and he figures that a train that is constantly moving makes less shrinkage in the same number of hours than a train that is moving perhaps half of the time and the rest of the time stand on a side track.

Q. What is the rate on packing house products and on dressed beef from Sioux City to Chicago?

A. 20 cents per hundred.

Q. State what is the meaning of the expression "testing the market" used with reference to the intermediate live stock markets like Sioux City?

1256 A. In the case of Sioux City it would mean that shippers to the north and west who can ship to Chicago by the way of Sioux City, would have the right to stop off at Sioux City and offer their stock on the market.

If, for any reason they decided not to sell there, they would go on

to Chicago and the rate would be the same if they go on to Chicago, the original rate from the point of origin of their shipment, to Chicago.

Q. The effect then of this practice is to make the additional cost to the South Dakota shipper of the rate to Chicago, the difference between the rate from his shipping point in South Dakota to Sioux City and the rate from the same point to Chicago, is it not?

A. Yes sir.

Q. Name stations in South Dakota or a station in South Dakota where the difference in the cattle rate to Sioux City and Chicago is about the average difference of all the stations in South Dakota?

A. Mitchell, South Dakota would be about the average.

Q. State the distance and the rate on cattle from Mitchell, South Dakota to Sioux City and Chicago?

A. Mitchell is 138 miles from Sioux City and the cattle rate is 18 cents. It is 639 miles from Chicago and the rate is 32 cents.

1257 Q. In the case of Mitchell, how does the combination of the cattle rate to Sioux City plus the dressed beef rate from Sioux City to Chicago compare with the through rate on cattle from Mitchell to Chicago?

A. The rate is 18 cents on the cattle from Mitchell to Chicago and 20 cents on the product from Sioux City to Chicago, making 38 cents as against the through cattle rate from Mitchell to Chicago of 32 cents, or a difference of 6 cents in favor of Chicago.

Q. So far as you have examined the tariffs showing the local rates to Sioux City from the surrounding territory, is it or is it not true generally that the combination of the local rate to Sioux City plus the product rate of 20 cents are higher than the live stock rates direct from the same territory to Chicago?

A. With the exception of a few stations in Nebraska, just across the river from Sioux City there is not a place beginning with the station closest to Sioux City on all the lines, but what the rate to Sioux City plus the 20 cent rate to Chicago is greater than the rate from the same point to Chicago, with the solitary exception on cattle of Chamberlain, South Dakota, where the combination is one cent in favor of Sioux City.

1258 Q. In your opinion is the present adjustment of live stock rates on the one hand and to Chicago on the other from the territory immediately surrounding Sioux City favorable or unfavorable to Chicago?

A. I think it is favorable to Chicago for the reasons that I have given here.

Q. State what the effect would be upon the interests of the Sioux City market if the rate on live stock to Chicago should be reduced to the present rate on packing house products?

A. The rate through all that country now, the difference between the rates to Sioux City and Chicago is less than the packing house rate from Chicago to Sioux City.

If the rate from the territory in western Iowa is still further reduced to Chicago, it widens the difference and it will take more stock to Chicago and less to Sioux City or compel the purchasers at Sioux

City to pay a higher rate proportionately in order to get the stuff to Sioux City.

Q. Would it be possible for the Sioux City interests to obtain similar reductions in the rates from western Iowa to Sioux City?

A. Those rates are the Iowa distance tariff rates and it has always been maintained that those rates are low. We should try hard to get them adjusted, but I have not much hope of success.

Q. What were the total receipts of cattle and hogs at the Sioux City stock yards for the year 1904?

A. The receipts of cattle and calves were 331,293 head
1259 and of hogs, 1,113,177.

Q. What were the average receipts of cattle and hogs at the Sioux City stock yards for the past five years?

A. For the five years ending December 31st, 1904, the average of cattle and calves was $344,708 and of hogs 984,388.

Q. What packing plants are in operation at Sioux City?

A. Armour & Company and Cudahy Packing Company have large plants there and there are a couple of smaller concerns.

Q. State the daily killing capacity of cattle and hogs of those plants?

A. About 800 cattle and 6,000 hogs.

Mr. SEVERANCE:

Q. From what parts of the country do you get your supplies shipped in, to the packing houses there at Sioux City?

A. We get more from South Dakota than from any other state.

Q. I don't mean the live stock, I mean the salt and lumber and that sort of thing.

A. Why, salt, as I understand it comes largely from the south or from Kansas, and the lumber, the cooperage comes from that direction, also.

Q. Cooperage comes from the south?

A. Why, I have been told so, I am not personally familiar with that.

1260 Q. I did not know whether you knew about that?

A. No, I am not positive, it is simply hearsay. The lumber used in building comes more from the north than it does from the south.

Mr. LYNDE:

Q. You were asked about the shrinkage and I did not hear what you stated abou- that.

A. I stated that the question of shrinkage was always a question which the shipper took into consideration, and that he preferred to ship on a train that was constantly moving, rather than on a train that stopped at Junction points because he figures there is less shrinkage in a moving train than on a standing train.

Q. How is it in a nearby market or a market several hundred miles distant?

A. I have tried for three years to find out and shippers vary in their opinion. Some shippers will say that the great shrinkage

occurs in the first 100 or 150 miles and other shippers will claim that stock will shrink the entire distance.

Q. Is shrinkage the same in cattle as in hogs?

A. Why, I think the shrinkage is considerably greater in cattle, because in the Western Weighing Association they allow a larger shrinkage on it but it all depends on the condition of the cattle. Grass fed cattle will shrink more than corn fed cattle.

1261 Q. How about the weather, how does that affect them?

A. In hot weather or in extreme cold weather the shrinkage is greater than in moderate weather, in both cattle and hogs.

Cross-examination by Mr. COWAN:

Q. What is done with the product of the packeries at Sioux City?

A. It is shipped away. Do you mean in what direction?

Q. Yes.

A. I am unable to state the proportion in which they go. Some goes east, some goes north and some south, but I am unable to state in what proportion it is distributed.

Q. Do you know anything about the volume of shipments or number of carloads that are shipped out?

A. No, I have not the figures on that.

Q. You spoke of the capacity of the plant. Do you know the amount they actually kill per day?

A. Why, they killed last year, 1904, there was killed in Sioux City something over 70,000 cattle and 500,000 hogs, but the Armour Packing plant was burned two years ago and rebuilt and put in operation again last December, so that the killing this year is somewhat more than double what it was last year.

1262 Q. What proportion of your live stock received and what amount in point of numbers are shipped eastward?

A. Shipped east alive? At the present time there is only a small amount. I have not the figures, but I should think not ten per cent.

Q. Do live stock move through Sioux City from the ranges in the north-west, from Montana and South Dakota to Chicago?

A. You can do that but nearly all—there is very little from Montana that comes through there. That goes further north. From South Dakota considerable number of cattle are received but thus far and especially, say this year a very small amount goes forward.

Q. Do you know what number of head pass through the yards there that are en route to Chicago from the ranges or from sources west of the Missouri river, do your stock yards report show that?

A. The published report does not show that.

Q. And you do not know independently?

A. No, not definitely. Not definitely enough to put a figure on it.

Q. Well, approximately, what would you think?

A. Why, as an opinion, offhand, I should not think there was over 20 per cent. of the receipts that come through from there to Chicago, and it may be much less than that.

1263 Q. Do any of the receipts which come from the east go to Chicago?

A. Not very often. Once in a great while there may be a car.

Q. Are people engaged in the business of feeding cattle and hogs in the vicinity of Sioux City, along the Missouri river?

A. Yes sir.

Q. Do they ship in when they are close by or drive in or haul in or how do they get in?

A. Most everything is shipped in. There are some cattle and hogs that are driven in and some hogs hauled in by teams.

Q. How many?

A. In 1904 there were 9776 cattle and calves driven in and 13,053 hogs driven in.

Q. You don't know what became of those particular animals or do you?

A. No, not definitely. The hogs were sold there.

Q. Are there any hogs there which are shipped east?

A. Yes sir.

Q. Well, now, in a case of that kind what would the rate of freight be on the hogs?

A. The most of the hogs that are sold there and shipped east are shipped to Boston. There are some of them shipped to Cudahy, Wisconsin. Once in a while some packer from Des Moines or Indianapolis or Chicago has an order on the market that is filled,

1264 but that is a small proportion.

Q. Suppose it is shipped to Chicago, what would be the rate?

A. Why, the rate is 23½ cents.

Q. What would it be on the cattle that are driven in and shipped out?

A. 25 cents.

Q. Who are the principal buyers of this live stock at the Sioux City yards for consumption?

A. The packers that are there.

Q. Armour & Company and Cudahy?

A. Armour & Company and Cudahy.

Q. Do you know what proportion of the total sales of Sioux City are to Armour & Company and the Cudahy Packing Company?

A. In hogs, I should think from 80 to 90 per cent. and of killing cattle at least as much as that and possibly more.

Q. At least how much?

A. At least 80 or 90 per cent. I make a distinction of killing cattle because there are a large number of stocker and feeder cattle handled in the Sioux City market which, of course, don't have any reference to the packers.

Q. Where are they shipped to when bought?

A. If they are stockers they ship them generally northwest on the pastures. The feeder cattle are cattle that are not fit for the market and are sent in there to be sold to the farmers and taken out and made fit for the market.

1265 Q. They are shipped out or driven out?

A. Both, but generally shipped.

Q. When they are shipped out, they may be shipped to Chicago or some other place?

A. Any place. It does not have any reference to where they will be shipped afterwards because they were bought there.

Q. Do you know whether the dressed meat of cattle which are killed there and the packing house products and dressed meat from the hogs are shipped to Chicago from Sioux City.

A. I know a considerable amount of it is but I don't know what proportion.

Q. Who owns or controls the stock yards Company at Sioux City?

Mr. MILCHRIST: That is objected to as incompetent and not proper cross-examination.

The COURT: How is that material?

Mr. COWAN: I have been informed—I don't know whether it is correct or not, but I want to show that the Stock Yards Company is in the control of the packers or some representative of the packers or member of the firm.

The COURT: I will sustain the objection.

Mr. COWAN: Is that on the theory that it is not proper cross examination?

The COURT: It is on the theory that it will save time also.
1266 I think it would be better if you would confine the evidence to the issue as near as you can, if we can find out what the issue is.

Mr. COWAN:

Q. Have you the stock yards' report with you?

A. I have the reports of receipts and shipments for 1904 and that contains a summary for all the preceding years. I have it also for 1903 and 1902 but it is all combined in the last report.

Q. The last one will have all the data we want.

A. Practically that, yes sir. Each year is shown and what each road brings in.

Q. Could you leave that with us for our use?

A. Yes sir.

Q. The figures are regarded as correct that are in that report?

A. We suppose they are, they are intended to be.

Q. Do the prices on live stock at Sioux City, paid there are they more or less dependent on how much freight was paid into Sioux City?

A. No sir.

Q. Is there a regular market there with a commission company who receive consignments of cattle and hogs and sell on the market to buyers and packers?

A. Yes sir.

Q. In the same manner that it is done at other markets in the country?

A. Yes sir.

Q. The difference in the method there and here, the way
1267 it is done here in Chicago is in the relative size of the two markets?

A. I suppose that is the difference almost entirely.

Mr. BAXTER:

Q. Do any of the individuals or firms who own packing houses at Sioux City also own packing houses at Chicago?
A. Yes sir, Armour & Company.
Q. Does Cudahy?
A. I think Cudahy has no packing house at Chicago.

Mr. BAXTER: That is all.

The COURT:

Q. What effect would it have on your market if the packing house rates were raised up to where they were before?
A. That would make it cost the packer there that much more to ship his product east and it would make a great difference in the other rates.
Q. Have you seen any difference since those rates were put where they are, in regard to the shipments to your market?
A. We think we have seen some little difference but not very much.
Q. It would not make much difference if it was put back, would it?
A. Except this thing, Judge, that during the time these rates have been in effect our market has been crippled because a packing house burned and we have only had half the capacity for
1268 slaughtering there, and now the burned house has been rebuilt and the market is coming back to its original position and is growing so we were not in a position to be able to make a good estimate as to the condition of this rate.

Mr. COWAN:

Q. What determines the price paid at Sioux City for live stock? Do you gauge the price, do the buyers or is it the market price paid at any other place or places, and if so, where?
A. As I understand it there is no market in the west that the market opens until they hear reports from all over the country as to the r-ceipts and the Chicago market is the earliest market in the day and we get the prices at Chicago and the receipts at all other markets. We get reports of the run of the stock not merely at Sioux City, but the runs at all markets have some factor in determining the price.
Q. The market at Chicago is the principal one that is looked to for setting the pace?
A. The market at Chicago is the largest market in the United States.

1269 E. J. BAIRD, called as a witness in behalf of the defendants, having been first duly sworn testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your full name?
A. E. J. Baird.
Q. Where do you reside?
A. Iowa County, Iowa.
Q. How long have you lived there?
A. Since 1854.
Q. Were you engaged in the cattle and hog business along in 1866, 1867, 1868 and 1871?
A. Yes sir.
Q. Were you engaged in the shipping of hogs and cattle to Chicago?
A. Yes sir.
Q. What was the name of your shipping station?
A. Well, I shipped from Victor, Ladora, and Marengo.
Q. I hand you a live stock contract, issued by the Mississippi & Missouri and Chicago & Rock Island Railroads dated Marengo Station, December 17, 1866 for two cars, Nos. 2412 and 2424 of hogs shipped from that point to Chicago at the rate expressed in the contract of $82. per car. Look at that, and see whether that is correct, sir, if you please, and file it as an exhibit to your testimony?
A. Yes sir, that is correct.

(The document here identified by the witness was filed with
1270 the court as a part of his testimony marked "Baird Exhibit No. 1.")

Mr. COWAN: I rather think we object to that, that is war prices.
Mr. BAXTER: We will argue that afterwards, let us get in the facts first.
The COURT: Before that time, they used to drive hogs from Iowa to Galena to the packing house.

Mr. BAXTER:

Q. Now, I hand you another live stock contract, issued by the same company to you, dated November 1, 1867 for three carloads of hogs at a rate of $78. per carload. Please identify that and see if it is genuine?
A. Yes sir.

(The document so identified by the witness was marked "Baird's Exhibit No. 2," and was filed with the court as a part of his testimony.)

Q. I hand you another contract issued by the same company to you, dated November 1, 1867, for four carloads of hogs shipped to Chicago at a rate of $78. per carload. I wish you would see if that is genuine, and file it as an exhibit to your testimony?
A. Yes sir, that is correct.

(The document here identified by the witness was marked "Baird's Exhibit 3" and was filed with the court as a part of his testimony.)

Q. I hand you another contract issued by the same com-
1271 pany to you dated October 23, 1868 for one carload of hogs with a rate of $75. per car. Is that correct?
A. Yes, that is correct.

(The document here identified by the witness was marked "Baird's Exhibit 4" and was filed with the court as a part of his testimony.)

Q. I now hand you another contract issued by the same company to you dated November 26, 1868 for one carload of hogs at the rate of $75. per car. See if that is right?
A. Yes sir, that is right.
Q. File that as an exhibit to your evidence.

(The document here identified by the witness was marked "Baird's Exhibit No. 5," and was filed with the court as a part of his testimony.)

Q. I hand you another contract*ed,* dated Victor, Iowa, dated, April 1, 1871, on some cars—what does that memorandum mean on the end?
A. 3374 is the number of the car.
Q. Just one car?
A. Yes sir.
Q. For one carload of cattle?
A. Yes sir, from Victor.

Mr. COWAN: I could not understand you quite.
Mr. BAXTER: I could not know myself what those figures were, and he says it was the number of the car, and there was but one car shipped.

1272 Q. That is for one carload of cattle with a rate of $72. per car, is that correct?
A. Yes sir.
Q. File that as an exhibit, if you please.

(The document here identified by the witness was marked "Baird's Exhibit No. 6" — was filed with the court as a part of his testimony.)

Q. Now, I wish you would state what the sizes of those cars were that were in use when those contracts were issued, were they larger or smaller than these cars now in use?
A. I don't remember exactly. Somewheres around 28 or 30 feet. We would get in some 12,500, to about 16,000 pounds, is about what we loaded then.
Q. Of hogs or cattle?
A. Live hogs. That is owing to the weather. You know in the winter we could do that, and in the summer it run around as nearly as I can remember, about 14 or 15 thousand pounds.

Q. Did you pay the rates specified in those contracts?
A. Oh, yes sir, yes, sir.
Q. Was there any rebate or reduction from that in any way?
A. Not any whatever.
Q. Your cars, I understand, were not as large as the present cars?
A. Oh, no, no sir.

1273 Cross-examination by Mr. COWAN:

Q. Did you go with the shipments, Mr. Baird, did you accompany the shipments?
A. Most always, yes, sir.
Q. You looked after the hogs and cattle en route?
A. Yes sir.
Q. Did they give you return transportation back?
A. Well, sir, I don't know.
Q. Did the billing call for it?

Mr. BAXTER: The billing in some of it says "no return transportation furnished," but Mr. Baird says they passed him back.

A. I am not positive. I kind of think they did on some of them, but I am not positive about that.
Q. They issued, you know, no separate slips for transportation?
A. Well, it has been a good while ago, I would not say.

Mr. COWAN:

Q. Now, the rate was coming down then, beginning in 1866, it was higher, and it came down?
A. Yes sir.
Q. And were there many railroads in Iowa at that time?
A. Well, I shipped over the C. B. & Q., and the Rock Island—no, not many.
Q. *H*as more railroads built into the country, and the country settled up and developed and increased its business, the
1274 rates came down?
A. Well, the rates, yes, were lower, lots lower.
Q. Isn't it a fact that for a good many years the rates were a good deal lower in the actual cost per carload than they are to-day, or do you ship now?
A. You mean lower than they are to-day?
Q. Yes sir.
A. Not that I know of.
Q. Where do you ship from?
A. Oh, I ship from Ladora, and Marengo and Victor and Sigourney and Guthrie and North English.
Q. What was the rate fifteen years ago from there to Chicago?
A. I could not tell you.
Q. Has the rate been advanced on hogs out there along about ten years ago, an increase in the hog rate?
A. I can't tell you?
Q. Well, there was all over the western half of Iowa—how far are you from Chicago?

A. Well, I can't tell you that.
Q. What?
A. I can't tell you. I am forty miles west of Iowa City.
Q. Do you ship now?
A. Yes sir, I have cattle in this week.
Q. Who loads the cattle out where you ship?
A. How?
Q. Do you load the cattle?
A. I load some of them. I do not load all of them, because
1275 I have got two sons that help load.
Q. Well, I mean does the shipper load, the railroad doesn't do the loading?
A. Yes sir, the shippers load.
Q. Who furnishes the bedding that goes in the car?
A. Well, we do not use bedding, that is not to amount to anything, use a little sand—it lays there side of the track. All we have got to do is to shovel it in.
Q. How much do you put in a car?
A. Oh, we put in two inches, two and a half to three inches deep.
Q. For hogs or cattle?
A. Cattle—well, hogs or cattle either.
Q. Do the- bed with hay or straw any other places in the country?
A. Not that I know of now.
Q. Is anything charged you for the bedding when you use it?
A. No sir.
Q. These hogs, did you former- ship in double decked cars?
A. No sir, I never shipped in a double deck.
Q. How much do your cattle amount to per car now when you ship in, do you recall how much it is per car about?
A. Do you mean the amount or what I have to pay the railroad?
Q. What you have to pay to the railroad?
A. Well, about $45. or $46., 22,000 pounds at 22 cents a
1276 hundred. You can figure it yourself, I suppose?
Q. You always ship a small shipment, just one or two cars, do you?
A. Oh, I have shipped, my partner and me shipped 22 cars at one time, 20 at another time, and most generally from one to eight, most generally.
Q. Did you ever come in on the meat trains?
A. No sir.
Q. What sort of a train do you come in on when you ship just a few cars?
A. Why a stock train, all stock, hogs and cattle.
Q. All stock?
A. Yes sir, after we get on the main line.
Q. You are off the main line?
A. Yes sir.
Q. And how do they carry your stock down to the main line?
A. Well, it is a stock train, but it is mixed, there is freight cars in with them.

Q. Do they run an engine and caboose up there for one or two cars?
A. No, it goes on south, it goes on, you can go to Kansas City.
Q. A regular train?
A. Oh, yes sir, a regular train.
Q. And stops you off at the main line, if you come to Chicago?
A. Yes sir, we are switched there on through trains, you know.
Q. After you get on a through train, you come on through?
A. Yes sir.
Q. How many cars do they haul in those through trains?
1277 A. Well, I don't believe that I could tell you.
Q. You have no idea?
A. I don't know.

R. M. CALKINS, recalled as a witness on behalf of the defendants, having been previously sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. You have already been sworn?
A. Yes sir.
Q. You have heard Mr. Baird's testimony giving these rates per carload on hogs and cattle, have you not?
A. Yes sir.
Q. I wish you would state now what the present rates are, which are expressed now in cents per hundred pounds, what they would be in carloads?
A. The present rate on hogs.
Q. That is from Marengo?
A. From Marengo, Iowa, to Chicago, in a 31 foot car would be $31.50; on cattle from Victor, Iowa, to Chicago, in 31 foot cars $41.80.
Q. Have you what the present rates would be on cars of lengths other than those you gave, 31 feet?
A. The present rate on a 36 foot car from Marengo, Iowa, on hogs would be $35.70; on cattle from Victor, Iowa, in a 36 foot car to Chicago, $48.40.
Q. Have you got what the present rates would be on any
1278 other cars than you mentioned, 31 and 36?
A. I have it on a 33 foot car.
Q. Let us have it?
A. On a 33 foot car the rate on hogs from Marengo to Chicago is $33.60; on a 33 foot car from Victor, Iowa, cattle to Chicago $45.10.
Q. In other words the rates you have quoted would be the rate per carload if the rate was expressed as it was at that time in dollars per car?
A. Based on the present minimum weight.

Cross-examination by Mr. COWAN:

Q. Mr. Calkins, I believe you testified the other day in regard to the reasonableness of these rates. One question I overlooked asking you, which I intended to ask you, and that is, if you do not par-

ticipate in the hauling of stock cattle from Kansas City or Council Bluffs to Evarts to be carried out on to the ranges in South Dakota?

A. From Council Bluffs, yes sir.

Q. How far do you take them?

A. In the *en*ighborhood of five hundred miles.

Q. How much do you actually get, Mr. Calkins, for that service?

A. It varies according to the point of origin.

Q. Well between what figures as a rule?

1279 A. That is a division with our connecting lines, I would prefer not to answer.

Q. Well, it is very much less than the rates that you have stated were unreasonable, isn't it, the divisions you get?

A. Those rates are made to stimulate the movement of cattle from the southern ranges to the north in anticipation that they will return when fitted for the market moved to Chicago at a local rate, therefore, they must necessarily be considerably lower than the ordinary local rate, it is a proportion of a through rate on business that is moving a great distance, I think something in the neighborhood of from 14 to 17 hundred miles.

Q. And what is the total rate from Amarillo to Evarts?

A. One hundred dollars for a 36 foot car, which I consider an exceedingly low rate.

Q. Oh, yes, but that is done in order to stimulate the movement into the ranges in South Dakota?

A. Yes sir.

Q. In order that you may get the haul back to Chicago?

A. That is taken into consideration, yes sir.

Q. Now, isn't it a fact that you have given the opinion that these rates are too low even in other cases where you have testified, where you accept this low division in order to stimulate a traffic to

1280 get it, still you claim the rate is too low?

A. The conditions are not at all similar in my opinion, there is an absolute difference. In the first place I believe that the movement from Texas to North Dakota or Montana is an unnatural one, I don't think that the margins of profit to-day will permit of the cattle men handling cattle that distance and return to Chicago and leave a reasonable margin of profit either for the cattle man or for the railroad.

Q. But you do not understand my question. Your rate from Evarts to Chicago is 38 cents. You move those cattle up there on a- extremely low division of rates in order to stimulate a traffic, which when you came to testify as to whether that traffic was reasonable, whether the rate was reasonable from Evarts to Chicago, did you not express the opinion that it was too low?

A. The rate north too low?

Q. No, no, the rate from Evarts to Chicago, you have given a 38 cent rate for some 800 odd miles.

A. I don't think the rate from Evarts to Chicago was in question at all.

Q. I am getting at the value of your opinion about the others

being too low, and do it by that method to see if you do not hold that opinion with respect to practically all the rates?

A. As a general proposition, yes sir.

Q. Now, Mr. Calkins, you have had made up the statement
1281 which I asked you for the other day in regard to the consist of trains moving east bound out of Savanna for the first fifteen days in February and October. I will ask you to kindly identify the statements and state whether they are correct statements from your reports in the St. Paul office?

A. They are.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY. 12.799

OFFICE OF CAR ACCOUNTANT.

12

EXHIBIT OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF OCTOBER, 1904.

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
				-CARS-			
1st	Extra	9		15	6	1	29
"	"				25	2	27
"	"	3		19	1		23
"	"	4		15	14		33
"	"			6	27	17	51
"	"			2		11	13
"	No.94			2	11	10	23
2nd	Extra			2	14	55	71
"	"	10	3	6		26	45
"	"	12		1	18	5	34
"	"	29			3	2	34
"	"			19	26		45
"	"			2		31	33
"	"	40					40
"	"	29		1	13	1	44
"	"	19		7	6	-	32
"	"	38		3	3		44
"	No.82	12		1	11	4	28
3rd	Extra	1	11	4	13	1	30
"	"	30		1		1	32
"	"	10		1	13		24
"	"			3	22	24	49
"	"	3			3	6	12
"	"			1	18	12	31
"	"					6	6
"	Ex.& 98						
"	No.94			2	5	2	9
4th	Extra	2			21	5	28
"	"	5	2	3	23	3	36
"	"	36					36
"	"	42					42
"	"	29	1	4	1		35
"	"	11			2	11	24
"	Ex.East				3	1	4
"	No.82			1	9	4	14
"	No.94			1	32	15	51
5th	Extra	3	1	16	11		31
"	"	32		3			35
"	"	16			9	4	29
"	"		4	16	6	5	31
"	"		5	3	24		32
"	"	6			22	5	33
"	No.82	32			8		40
"	No.94			1	10	12	23
6th	Extra	10		20	1		31
"	"	6		8	10		24
"	"	6	4	17	3		30
"	"				1	23	24
"	"			3	9	17	29
"	"	16	1	11	5		33
"	"	11		1	22		34
"	"	9		10	10	1	30
"	"	29		1	1		31
"	No.82				28	7	35

906

12798

No. 2.

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF OCTOBER, 1904.

-CARS-

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
7th	Extra	2		17	13		32
"	"			8	28	4	40
"	"			20	16		36
"	"				6	2	8
"	"				29	3	32
"	"	23		3	19		45
"	"	20		1			21
"	"				23	1	24
"	No.94			1	14		15
8th	Extra	1		17	9		27
"	"	9	4	8	14	1	36
"	"	8		12	20		40
"	"	4	1	8	15		28
"	"				38	4	42
"	No.62			1	30	1	32
"	No.94		"	1	10	11	22
9th	Extra	2		8	21	1	32
"	"	14			18	4	36
"	"	31			4		35
"	"	6		21	7	3	37
"	"	40					40
"	"	33			5		38
"	"	34		6	2		42
"	"		22	3	6		31
"	"				33	2	35
"	"	40					40
"	No.62				30	8	38
10th	Extra	7	1	12	13		33
"	"	11		7	14		32
"	"	28		1	7		36
"	"	17		1	18		36
"	No.62	21	1	2	9		33
"	No.94	"		3	12	12	27
11th	Extra	17			18	8	43
"	"	32					32
"	"	8		3	17	2	30
"	"	21		1			22
"	"			4	27	3	34
"	"	25		5	3		33
"	"	13	3	9	4		29
"	No.62				30	5	35
"	94 Ex.			6		4	10
12th	Extra			6	25	7	38
"	"	28			6		34
"	"	34					34
"	"			16	10	5	32
"	"		26	3			29
"	"			7	22	2	31
"	No.62			1	25	3	29
"	No.94				6	11	17
13th	Extra	24		5	6		35
"	"		18	6	5		29
"	"	32		1	1		34
"	"	9	17	2	9		37
"	"		17		12	2	31
"	"	7		4	19	2	32
"	"	28	2		10		40
"	"	34					34

No. 3.

1279 2

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND
FOR THE FIRST 15 DAYS OF OCTOBER, 1904.

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
					-CARS-		
13th	No.62				21	7	28
"	No.94				9	5	14
14th	Extra	23	1		9		33
"	"					7	7
"	"	5		6	21		32
"	"	16		12	6		33
"	"	2		12	20	3	37
"	"	24		12	1		37
"	"			17	13	3	33
"	No.62			3	16	6	25
"	No.94			2	4		6
15th	Extra		19		14		33
"	"			6	23	1	30
"	"	3		9	23		35
"	"	16	4		18	1	39
"	"	17			20	1	38
"	No.62		1		20		21
"	Extra				11	3	14
"	No.94			1	11	8	20

1279d.

S U M M A R Y

Live Stock	1333
Fruit	169
Perishable Freight	532
Dead Freight	1522
Empty Cars	485
Total	4041.

909

1279e

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

OFFICE OF CAR ACCOUNTANT.

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF FEBRUARY, 1904.

Date	Train No.	-CARS- Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
1st	Extra			8	15	1	24
"	Ex.& 92				5		5
"	Extra	1	22	5	2	1	31
"	1/62				12	8	20
"	2/62	29		2	1		32
"	No.94			1	8	1	10
2nd	Ex.East					2	2
"	Extra				24	2	26
"	"			1	20	7	28
"	"	2			24	2	28
"	"		2	9	16	3	30
"	1/62 & 62				9	2	11
"	2/62-Ex.	28			1		29
"	3 & 2/62.	29				2	31
"	3/62	30			2		32
"	4/62	32					32
"	No.94				6	3	9
3rd	Extra	4		24	1		29
"	"	2		16	3		21
"	"			5	19	11	35
"	"	10		2	18	1	31
"	"	24		1	5	2	32
"	"	21		2	8		31
"	"				2		2
"	"					1	1
"	1/62			1	10	3	14
"	2/62	29		1	3		33
"	3/62	18		5	5		28
"	No.94				10	4	14
4th	Extra				12	3	15
"	"	1		1	24	7	33
"	"	25		1	8	4	38
"	"	7		20	7		34
"	"			14	13	1	28
"	"	18			12	2	32
"	"	27			3	1	31
"	1/62				3	3	6
"	2/62	16		1	11		28
"	No.94				5		5
5th	Extra				6		6
"	"		1	18	12		31
"	"			2	29	2	33
"	"			9	14	23	46
"	"	3		2	17	9	31
"	"	21		7	1	1	30
"	"	2		23		4	29
"	1/62				19	12	31
"	2/62	23		6			29
"	3/62	18		10	7		35
"	No.94				15	8	23
6th	Extra				28	6	34
"	"			1	2	1	4
"	"			14	13	4	31

910

No. 2.

1279f.

CONLIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF FEBRUARY, 1904.

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
				-CARS-			
6th	Extra			8	19		27
"	"	7		8	7	25	47
"	"				25	11	36
"	"			4	21	12	37
"	"				1	9	10
"	No.62	7		1	19	8	35
"	Extra	8			20	5	33
"	"				3	3	6
"	Ex.East	4			16	10	31
"	No.94				8	12	20
7th	Extra	10		7	12	10	39
"	"	2		4	14	19	39
"	"		4	10		15	29
"	"	32					32
"	"			1	15	27	43
"	"	30					30
"	"	3	1	3	18	17	42
"	"	32					32
"	"		1	15	8	3	27
"	"				23	14	37
"	"	17		6	5		28
"	4/62	14	1	9	5	1	30
"	1/62	25		4	1		30
"	2/62	29		2	1		32
"	3/62	33		1			34
"	5/62	32					32
8th	Extra				24	22	46
"	"	7		9	9	4	29
"	"				29	13	42
"	"			8		1	9
"	"				25	30	55
"	"	12			15	3	30
"	1/62	1		7	5		13
"	2/62	30			4	2	36
"	No.94			1	17		18
9th	Extra				17	20	37
"	"	2			16	25	43
"	"			1	19	26	46
"	"				22	18	40
"	"			1	23	13	37
"	"			21	5	1	27
"	"	32				1	33
"	1/62				4		4
"	2/62	34				1	35
"	3/62	33					33
"	4/62	32					32
"	5/62	31		1			32
"	6/62-Ex.	33					33
"	No.94				9	17	26
10th	Extra	19			9	10	38
"	"	34					34
"	"	34					34
"	"	1		7	21	11	40
"	"		1		39	1	41
"	"	2		5	18	12	37
"	"	33					33
"	1/62			3	4	11	18
"	2/62	34				1	35

911

1279g

No. 5.

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND
FOR THE FIRST 15 DAYS OF FEBRUARY, 1904.

-CARS-

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
10th	3/62	30		3		1	34
"	4/62	10		17	5	1	33
"	5/62	34				1	35
"	No.94				9	21	30
11th	2/62	28		3		1	32
"	3/62	36					36
"	4/62	30		4	3	1	38
"	No.94-Ex.				13	15	28
"	Extra	25		9			34
"	"	1		2	24	13	40
"	"	1	3	15	6		25
12th	Extra				25	13	38
"	"	6		18	5		29
"	"	6		6	16	3	31
"	"	13		8	8	1	30
"	"	36		1			37
"	1/62			9	1		10
"	2/62 & 62	37		1			38
"	No.94-Ex.				6	8	14
13th	Extra	1		10	14		25
"	"				8	8	16
"	"			1	31	16	48
"	"	1		4	10		15
"	"	20		5		6	31
"	No.94	[illegible]	[illegible]	[illegible]	11	4	15
14th	Extra		1	3	31	9	44
"	"				1	16	17
"	"	1		6	11	6	24
"	"	3		11	11	12	37
"	No.62	21	1	8	3	2	35
"	1/62	22		7			29
"	2/62	25			6		31
"	3/62	30					30
"	4/62	33					33
"	5/62	26			3	1	30
"	6/62	31					31
"	7/62	31					31
"	8/62	28					28
"	9/62	25		3	1		29
15th	Extra	19		4	4	4	31
"	"				14	33	47
"	"	16		5	23	5	49
"	"		2		19	17	38
"	"	22			7	3	32
"	"				15	27	42
"	1/62			2	13	4	19
"	2/62	31					31
"	No.92-Ex.				8	22	30
"	No.94			2	5	6	13

912

1279k.

S U M M A R Y

Live Stock	1786
Fruit	40
Perishable Freight	527
Dead Freight	1435
Empty Cars	871.
Total	4659.

Q. Now, so far as you know, Mr. Calkins, does the movement covering fifteen days in February, being a winter month, and then fifteen days in October, a fall month, and better weather, fairly represent the movement of trains through Savanna east bound and the manner in which they are made up?

A. I think it would, yes sir.

Q. Is there practically any material difference in the live stock traffic as handled east bound on your lines of railroad and the lines of your competitors?

A. Well, I would not like to say as to that, I don't know what their system is, but I presume it is somewhat similar under the same conditions. Those conditions change according to grade, line, drawing capacity of the engine and a great many other details that enter into the operation of the railroad that I am not competent to testify on.

Q. Do you happen to know at this time what proportion of the live stock tonnage of the St. Paul Raod and the packing house products and dressed meat tonnage moves through Savanna in coming to Chicago?

1282 A. I could not answer that.

Q. Do you know whether it was greater than half, or less than half of the Iowa business in both classes of traffic?

A. Well, I think it would be less than half.

Q. All of the traffic moving out of Council Bluffs and Omaha and all moving out of Kansas City, and all that is intermediate between these points and Savanna and the Savanna River crossing, would cross the river at that point?

A. No sir. The Kansas City division business would not be included in the Savanna reports.

Q. Where does it cross at, Davenport?

A. Yes sir, it comes through Davenport on a cut off east of Savanna.

Q. It would just take the Omaha and western Iowa business?

A. Yes sir, also the Dubuque division.

Q. The showing made though at Savanna crossing as to the makeup of trains and train tonnage would not be materially different probably from your Prairie du Chien Crossing, do you call that to Chicago?

A. The trains would be heavier out of Savanna than they would out of Prairie du Chien considerably, the grades are much lower.

Q. And that would apply to both classes of traffic?

A. Yes sir.

1283 Q. Aside from that the relative conditions then, aside from that, would be substantially the same, would they?

A. Well, the Prairie du Chien division is not considered a first-class modern railway.

Q. And the other is?

A. The other is.

O. P. ANDERSON, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. You live in Nashville?
A. Yes sir.
Q. You are my Secretary?
A. Yes sir.

Q. I wish you would state if you have correctly compiled a comparison between the local rates of the Chicago, Milwaukee & St. Paul Railway on cattle and hogs to Chicago, from points on the main line intermediate between St. Paul and Chicago, with the rates on cattle and hogs in other sections of the country for similar distances?

A. Yes sir, I have made that compilation. The stations on the C. M. & St. P. Railway beginning with Deerfield, Illinois, which is 23.8 miles from Chicago, and the stations selected progress at intervals of 25 miles approximately in the direction of St. Paul. The furthest distant station from Chicago which I used was a place
1284 in Lemoyle, Wisconsin. I think took the tariffs——

Mr. SEVERANCE: Three hundred miles from where, Chicago?

A. Three hundred miles from Chicago, yes, all on the main line of the C. M. & St. P. Railway, between St. Paul and Chicago. I then took the tariffs of a number of southern railways, by that I mean lying in territories south of the Ohio River, and I find that the rates on cattle, local rates upon cattle from intermediate stations on the Milwaukee Road into Chicago are lower than the rates of the Nashville, Chattanooga & St. Louis Railway, to Memphis, to Evansville, to Louisville, or to Atlanta on cattle. They are lower than the rates of the Louisville & Nashville Railroad from its Kentucky Central Division to Cincinnati. They are lower than the rates of the Louisville & Nashville Railroad from its main line stations in Kentucky and Tennessee to Louisville. They are lower than the local rates of the Southern Railway in Alabama. They are lower than the local rates of the Southern Railway in Virginia, upon its Washington line. They are lower than the Interstate Distance tariff that the Southern Railway applies in Tennessee, Alabama and Georgia, and Mississippi. They are lower than the rates of the Southern Railway from points in East Tennessee to Atlanta. They are lower than the rates of the Tennessee Central Railroad, that is the railroad
1285 which extends from Nashville, Tennessee, to Knoxville, Tennessee. They are lower than the rates of the Tennessee Central Railroad to Louisville and Cincinnati. They are lower than the distance tariff of the Canadian Pacific Railway on its western line. I have also included in said statement a comparison of rates with the 23½ cent rate that prevails from the Missouri River, and I find that from Tennessee points to points in Virginia—there is a great deal of cattle raised in Tennessee and it is fed in Virginia, and a great deal moves on these rates—from Tennessee points to points in Virginia the rate is higher than this 23½ cent rate for a similar distance. The rates from points in Manitoba on the Great Northern Road, I

think it is, to St. Paul are higher than these rates. The rates from points in Washington and Idaho to Portland, Oregon, where there are packing houses are lower—are higher than the rates in controversy. All that I have said so far relates to cattle.

I did not have as many tariffs showing the rates on hogs as I did showing the rates on cattle, being away from home. My comparison with hog rates shows that the local rates on the Canadian Pacific Railway are higher than the rates in controversy. The rates of the Southern Railway in Alabama are higher. The Interstate
1286 rates applied by the Southern Railway in Tennessee, Alabama, Georgia and Mississippi are very much higher than these rates. The rates from stations on the Louisville & Nashville Railroad in Kentucky and Tennessee to Louisville are higher. The rates from the Kentucky Central Division of the Louisville & Nashville Railroad in Kentucky, to Cincinnati, Ohio, are higher. The rates from Nashville Chattanooga & St. Louis stations to Atlanta and Memphis, are also higher. I file said statement as Exhibit No. 1 to my testimony.

1286*a* O. P. ANDERSON EX. No. 1.

Comparison of Rates on Cattle for Similar Distances in Other Sections with the Local Rates of the C. M. & St. P. Ry. on Cattle to Chicago.

23.8 miles, Deerfield, Ills. to Chicago, 5.5 cents.
25 miles, Canadian Pacific Distance Tariff, 6.5 cents.
25 miles, Southern Ry. Alabama Local 8 cents.
25 miles, Southern Ry. interstate rates between stations in Tenn., Ala., Ga. and Miss., 8 cents.
26 miles, Demossville, Ky. to Cincinnati, L. & N. R. R., 6 cents.

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49 miles, Fox Lake to Chicago, 6 cents.
49 miles, Laconia, Tenn. to Memphis, N. C. & St. L. Ry., 6.9 cents.
50 miles, Canadian Pacific Local, 10 cents.
50 miles, Southern Ry., Alabama Local, 9½ cents.
50 miles, Southern Ry. in Virginia, 8 cents.
50 miles, Interstate So., bet. stations in Tenn., Ala., Ga. and Miss., 9½ cents.
52 miles, Boyd, Ky. to Cincinnati, L & N R R, 9 cents.
52 miles, Nolin, Ky. to Louisville, L & N R R, 7½ cents.

73.6 miles, Walworth to Chicago, 8.3 cents.
75 miles, Neely, Tenn. to Memphis, N C & St L, 9.9 cents.
75 miles, Canadian Pacific local, 13 cents.
75 miles, Southern Ry. Alabama Local, 11½ cents.
75 miles, Southern Ry. in Virginia, 9 cents.
75 miles, Interstate Southern Ry., Tenn., Ala., Ga. and Miss., 11½ cts.
Kiserton, Ky. to Cincinnati, L & N R R, 11 cents. 75 miles.
Rowletts, Ky. to Louisville, 75 miles, 12 cents.

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99 miles, Janesville, Wis. to Chicago, 10 cents.
100 miles, Canadian Pacific local, 15 cts.
100 miles, So. Ry., Ala. Local, 13½ cents.
100 miles, So. Ry. interstate in Tenn., Ala., Ga. and Miss., 13½ cts.
Flanagan, Ky. to Cincinnati, 10[illegible]miles, 13½ cents, L. & N R R.
Smiths Grove, Ky. to Louisvil[illegible], 100 miles, 15 cents, L & N R R.

1286*b* 125 miles, Stoughton, Wis. to Chicago, 11 cents.
128 miles, Huron, Tenn. to Memphis, 11.4 cents, N C & St L.
130 miles, Canadian Pacific local, 16½ cents.
125 miles, So. Ry. Alabama Local, 16 cents.
125 miles, So. Ry. stations in Va., 14 cents.
125 miles, Interstate So. Ry. bet. stations in Tenn., Ala., Ga. and Miss., 16 cents.
129 miles, Mayde, Ky. to Cincinnati, L & N R R, 14 cents.
125 miles, Woodburn, Ky. to Louisville, L & N R R, 15 cents.

151.9 miles, Windsor, Wis. to Chicago, 12½ cents.
Whiteside, Tenn. to Atlanta, 152 miles, 22 cents.
Birmingham, Ala. to Meridian, Miss., 152 miles, 22 cents.
150 miles, Canadian Pacific local, 17½ cents.
150 miles, So. Ry. stations in Va., 16 cents.
150 miles, Interstate Southern Ry. bet. stations in Tenn., Ala., Georgia and Mississippi, 18 cents.
Mullins, Ky. to Cincinnati, 151 miles, 16½ cents, L & N R R.
South Tunnel, Tenn. to Louisville, 152 miles, 15 cents, L & N R R.

177.3 miles, Portage Wis. to Chicago, 12.5 cents.
Atlanta, Ga. to Vidalia, Ga., 180 miles, 16.2 cents.
180 miles, Canadian Pacific local, 18½ cents.
175 miles, So. Ry. stations in Va., 17 cents.
175 miles, Interstate So. Ry. bet. stations in Tenn., Ala. Ga. and Miss., 19 cents.
175 miles, Edgefield Jc. to Louisville, 15 cents, L & N R R.
Athens, Tenn. to Atlanta, 167 miles, 17.3 cents.
176 miles, Stevenson, Ala. to Atlanta, 24 cents, N C & St L.

202.8 miles, Lyndon, Wis. to Chicago, 15 cents.
Cowan, Tenn. to Atlanta, 202 miles, 24 cents.
Kimbro, Tenn. to Louisville, Ky., 201 Miles, 18 cents.
200 miles, Canadian Pacific local, 19½ cents.
200 miles, So. Ry. stations in Va., 17½ cents.
200 miles, So. Ry. interstate bet. stations in Tenn., Ala., Ga. and Miss., 20 cents.
Franklin, Tenn. to Louisville, 17½ cents, L & N R R.
208 miles, Bellebuckle, Tenn. to Evansville, 24.1 cents.
Umatilla, Ore. to Portland, Or[illegible]., 187 miles, 26.4 cents.

224.2 miles, Orange, Wis., to Chicago, 16 cents.
Winsted, Tenn. to Louisville, Ky., 224 miles, 21 cents, N C & St L.
230 miles, Canadian Pacific local, 21½ cents.
225 miles, So. Ry. stations in Virginia, 17½ cents.
225 miles, Interstate So. Ry. between stations in Tenn., Ala., Ga. and Miss., 22 cents.
225 miles, Darks Mill, Tenn. to Louisville, 20 cents.
226 miles, Tullahoma, Tenn. to Evansville, 226 miles, 25 cents.

1286c 249.6 miles, Lafayette, Wis. to Chicago 17 cents.
Winsted, Tenn. to Atlanta, 252 miles, 24 cents.
Normandy, Tenn. to Louisville, 249 miles, 23 cents.
Hawkinsville, Ga. to Augusta, Ga., 160 miles, 17.1 cents.
Watertown, Tenn., to Louisville, Ky., 231 miles, 22 cents.
Lancaster, Tenn. to Louisville, Ky., 252 miles, 27 cents.
250 miles, Canadian Pacific local, 22 cents.
250 miles, So. Ry. in Va., 18 cents.
250 miles So. Ry. interstate in Tenn., Ala., Ga. and Miss. 23½ cents.
Lynnville, Tenn., to Louisville, Ky., 250 miles, 20 cents.
Mt. Pleasant, Tenn. to Louisville, 244 miles, 20 cents.
Lebanon, Tenn. to Evansville, Ind., 188 miles, 20.5 cents.
Birmingham, Ala. to Memphis, 251 miles, 20.5 cents.

277.6 miles, Medary, to Chicago, 18 cents.
Kimbro, Tenn. to Atlanta, 275 miles, 24 cents.
Cowan, Tenn. to Louisville, Ky., 274 miles, 25 cents.
Cookeville, Tenn. to Louisville, Ky., 276 miles, 28 cents.
280 miles, Canadian Pacific Local, 23 cents.
275 miles, So. Ry. stations in Va., 19½ cents.
275 miles, Interstate So. Ry. between stations in Tenn., Ala., Ga. and Miss., 25 cents.
278 miles, Prospect, Tenn., to Louisville, Ky., 23 cents.
Winchester, Tenn. to Louisville, 272 miles, 22.7 cents.
Wartrace, Tenn. to Evansville, 212 miles, 24.1 cents.

300.3 miles, Lamoille, Wis. to Chicago, 19 cents.
Bellevue, Tenn. to Altanta, 301 miles, 30 cents.
Stevenson, Ala. to Louisville, Ky. 300 miles, 27 cents.
Cookeville, Tenn. to Louisville, Ky., 276 miles, 28 cents.
300 miles, Canadian Pacific local, 24 cents.
300 miles, So. Ry. stations in Va., 20½ cents.
300 miles, Interstate So. Ry. bet. points in Tenn., Ala., Ga. and Miss., 25 cents.
Athens, Ala. to Louisville, 294 miles, 23 cents.
La Grande Ore. to Portland, Ore., 305 miles, 31.6 cents.

Tariff References.

Atlanta Local Tariff No. 4, Amdt. No. 27 to I. C. C. No. 630-A. So. Ry.
Western Livestock Tariff, N. C. & St. L., I. C. C. No. 377-A, Amdt. No. 19 to I. C. C. No. 377-A.
Supp. No. 1 to Western Livestock Tariff No. 1, I. C. C. No. 377-A, N C & St. L.
A. G. S. R. R. I. C. C. 233.
So. Ry., I. C. C. 8499.
I. C. C. No. 17, Tennessee Central Ry.
Canadian Pacific Western Lines Tariff W. No. 49.
Alabama Local Tariff 4, So. Ry., I. C. C. 7732.
Virginia Local Tariff No. 3, I. C. C. 7251, Table 1.
So. Ry. Interstate Local Tariff 1-C, I. C. C. No. 8186.
L. & N. G. F. O. 325, I. C. C. No. A-3447.
Amdt. No. 10 to I C. C. No. A-3447, L & N R R.
1286d So. Ry. Supp. 1 to Interstate Local Tariff, I. C. Amdt. No. 1 to I. C. C. No. 8186, effective June 20, 1904.
So. Ry., I. C. C. No. 8519, I. C. C. No. 6060, I. C. C. No. 5638.

Miscellaneous Rates Higher than the 23½ Cent Rate on Cattle, Missouri River to Chicago.

New Orleans, La. to Greensboro, Ala., 286 miles, 32.5 cents.
L. & N. R. R. I. C. C. B—1861, So. Ry. I. C. C. No. 7732.
Harriman Jc. Tenn. to Memphis, 390 miles, 33 cents.
So. Ry. I. C. C. No. 4494 and 7217.
Holmes Gap, Tenn. to Cincinnati, O., 375 miles, 34½ cents.
Caney Fork, Tenn., to Cincinnati, O., 355 miles, 32½ cents.
Cookeville, Tenn., to Cincinnati, O., 334 miles, 30½.
I. C. C. No. 17, T. C. R. R.
450 miles, Canadian Pacific Local, 31½ cents.
Canadian Pac. Western Lines Tariff W. No. 49
450 miles, So. Ry. in Virginia, 25½ cents.
Va. Local Tariff 3, I. C. C. 7251.
450 miles, So. Ry. interstate in Tenn., Ala., Ga. and Miss., 32 cents.
I. C. C. No. 8186.
Limestone, Tenn. to Richmond, 393 miles, 27.7 cents.
Greeneville, Tenn. to Richmond, Va., 407 miles, 27.7 cents.
So. Ry. Rate Issue, B 7121, I. C. C. No. 8900.
Morris, Man. to St. Paul, 446 miles, 32 cents.
Gretna, Man. to St. Paul, 419 miles, 32 cents.
G. N. Ry., G F O No. 7690, I. C. C. A-842?
Sprague, Wash. to Portland, Ore., 499 miles. 36.2 cents.
Northern Pacific Tariff I. C. C. No. B–401.
Boise Idaho, to Portland, Ore., 506 miles, 52.7 cents.
U. P. Ry., I. C. C. No. 851.

1286e *Comparison of Rates on Hogs for Similar Distances in Other Sections with the Local Rates of the C. M. & St. P. Ry. on Hogs to Chicago.*

23.8 miles, Deerfield, Ill. to Chicago 6 cents.
Eads, Tenn. to Memphis 24 miles, 8 cents N C & St L.
25 miles, Canadian Pac. local, 6½ cents.
25 miles, So. Ry., Alabama Local, 9 cents.
25 miles So. Ry. interstate in Tenn., Ala. Ga. and Miss., 9 cents.
Demossville, Ky. to Cincinnati, 26 miles, 7 cents.
Belmont, Ky. to Louisville 6 cents.

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49 miles, Fox Lake to Chicago, 8 cents.
Laconia, Tenn., to Memphis, 49 miles, 10 cents.
50 miles, Canadian Pacific local, 10 cents.
50 miles, So. Ry., Alabama Local, 11 cents.
50 miles, So. Ry. in Virginia, 8 cents.
50 miles, So. Ry. interstate between stations in Tenn., Ala., Ga. and Miss., 11 cents.
Boyd, Ky. to Cincinnati, 52 miles 11 cents.
Nolin, Ky. to Louisville, 52 miles 10 cents.

73.6 miles, Walworth, to Chicago, 11 cents.
Neely, Tenn. to Memphis, 75 miles, 11.1 cents.
75 miles, Canadian Pacific, 13 cents.
75 miles, So. Ry. Ala. local, 13 cents.
Kiserton, Ky. to Cincinnati, 75 miles 13 cents.
Rowletts, Ky. to Louisville, 75 miles, 17 cents.

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99 miles, Janesville, Wis. to Chicago, 12½ cents.
100 miles, Canadian Pacific local, 15 cents.
100 miles, So. Ry. Alabama local, 15 cents.
100 miles So. Ry. interstate between Tenn. Ala. Ga. and Miss., 15 cents.
Flanagan, Ky. to Cincinnati, 101 miles, 16 cents.
Smiths Grove, Ky., 100 miles, 20 cents.

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125 miles, Stoughton, Wis. to Chicago, 13½.
130 miles, Canadian Pacific local, 16½ cents.
125 miles, So. Ry. Ala. Local, 17½ cents.
125 miles, So. Ry. Interstate bet. stations in Tenn., Ala., Ga. and Miss., 18 cents.
Mayde, Ky. to Cincinnati, 129 miles, 19 cents.

1286*f* 151.9 miles, Windsor, Wis. to Chicago, 16½.
Whiteside, Tenn. to Atlanta, Ga., 152 miles, 30 cents.
150 miles, Canadian Local, 17½ cents.
150 miles, So. Ry. stations in Va., 16 cents.
150 miles, So. Ry., interstate in Tenn., Ala. Ga. and Miss., 20 cents.
Mullins, Ky. to Cincinnati, 151 miles, 21 cents.
South Tunnel, Tenn. to Louisville, 152 miles, 20 cents.

177.3 miles, Portage, Wis. to Chicago, 17½ cents.
Stevenson, Ala. to Atlanta, Ga., 176 miles, 31 cents.
180 miles, Canadian Pacific Local, 18½ cents.
175 miles, So. Ry. stations in Va., 17 cents.
175 miles, Interstate So. Ry. Tenn., Ala. Ga. and Miss., 21 cents.

202.8 miles, Lyndon, Wis. to Chicago, 20 cents.
Cowan, Tenn. to Atlanta, 202 miles, 31 cents.
200 miles, Canadian Local Tariff, 19½ cents.
200 miles, Interstate So. Ry. bet. Tenn., Ala., Ga. and Miss., 22 cents.

224.2 miles, Orange, Wis. to Chicago, 22 cents.
Winsted, Tenn. to Louisville, Ky., 224 miles, 21 cents.
225 miles, So. Ry. interstate in Tenn., Ala., Ga. and Miss., 24½.
Darks Mill, to Louisville, 225 miles, 21 cents.

249.6 miles, Lafayette, Wis. to Chicago, 22 cents.
Winsted, Tenn. to Atlanta, 252 miles, 31 cents.
Normandy Tenn. to Louisville, Ky., 249 miles, 24 cents.
Lancaster, Tenn. to Louisville, Ky., 252 miles, 27 cents.
250 miles, Canadian Pacific local, 22 cents.
250 miles, Interstate So. Ry. bet. stations in Tenn., Ala., Ga. and Miss., 26 cents.
Lynnville, Tenn., to Louisville, 250 miles, 24 cents.

277.6 miles, Medary, to Chicago, 22 cents.
280 miles, Canadian Local, 23 cents.
275 miles, So. Ry. interstate bet. Tenn., Ala. Ga. and Miss., 28 cents.

300.3 miles, Lamoille, to Chicago, 22 cents.
Stevenson, Ala. to Louisville, 30 cents., 300 miles.
300 miles, Canadian local, 24 cents.
300 miles, So. Ry. Interstate, Tenn., Ala. Ga. and Miss., 28 cents.
Athens, Ala. to Louisville, 294 miles, 27 cents.

1287 Cross-examination.

By Mr. COWAN:

Q. Did you compare the rates in Central Traffic Association territory?

A. I only claim to be comparing rates in southern territory.

Mr. COWAN: The other comparisons will be put in by other witnesses.

Q. Did you examine and make a comparison, I don't mean did you make a statement? I know you didn't. In the course of your comparison did you look at the Central Traffic Association territory rates?

A. No, sir, I did not.

Q. That was because you knew they were less, did you not?

A. I know the rate from Chicago to New York was 28 cents; that is all I did know.

Q. But taking this middle western country, north of the Ohio River and between the Allegheny Mountains and the Mississippi, are not those live stock rates lower than the rates complained of in this case?

A. I could not say a word about that, for I do not know.

Q. All right. That is all.

1288 HIRAM R. MCCULLOUGH, a witness called in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. What is your name?

A. Hiram R. McCullough.

Q. With which one of the defendant companies are you connected and in what capacity?

A. I am third vice president of the Chicago & Northwestern Railway.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. My railroad experience has been with the two railroads, the Illinois Central and Chicago & Northwestern. I was with the general freight department of the Illinois Central for six years; division freight agent of the Chicago & Northwestern Railway five years; assistant general freight agent of the Chicago & Northwestern Railway one year; general freight agent of the Chicago & Northwestern Railway four years; general traffic manager of the Chicago & Northwestern road one year; third vice president of the Chicago & Northwestern Railway for the past eight years.

Q. Has your duties during any portion of that period had relation to the making of freight rates?

A. All of it.

1289 Q. What are the rates at the present time on cattle and hogs and packing products and fresh meats in car loads to

Chicago from Sioux City, Council Bluffs, Omaha, South Omaha, Des Moines and Cedar Rapids?

A. I have a statement here showing those rates, from our printed tariffs, shall I read them?

Q. No, sir, there are so many of them.

The COURT: Just file them.

Mr. BAXTER:

Q. Does that show the rates from your intermediate stations?

A. Yes, sir, it shows the rates on cattle and hogs, fresh meats, packing house products in car loads, from Council Bluffs, Omaha, South Omaha, Sioux City, Des Moines, Marshalltown and Cedar Rapids to Chicago; also to the Mississippi River.

Mr. LYNDE: Simply those points?

A. Those points, only.

Mr. COWAN:

Q. Does it show the proportional, Mr. McCullough, to the Mississippi River?

A. Yes, sir.

(The statement produced by the witness was marked "McCullough's Exhibit No. 1," and filed with the Court as a part of the testimony of said witness.)

1288*a* STATEMENT No. 1.

To Chicago from—	Cattle, carloads, per 100 lbs.	Hogs, carloads, per 100 lbs.	Fresh meat, carloads, per 100 lbs.	P. H. P., carloads, per 100 lbs.
Council Bluffs.....	23.5	23.5	20	20
Omaha.....			*a*18.5	*a*18.5
South Omaha.....				
Sioux City.....	25	23.5	20	20
			*a*18.5	*a*18.5
Des Moines.....	22	23.5	18.5	18.5
			**a*10	**a* 7
Marshalltown.....	22	21	16	16
			**a* 8	**a* 5
Cedar Rapids.....	21	18.5	13.5	13.5
			**a* 7	**a* 4

a To Chicago when destined to points East of Indiana-Illinois State line.
**a* To Mississippi River when destined to points East of Indiana-Illinois State line.

McCullough Exhibit No. 1, vol. 11, p. 1288.

Mr. BAXTER:

Q. What freight earnings did your company receive on packing house products and fresh meats and what were the total
1290 freight earnings of your road on all freight transported for the year ending June 30th, 1905?

A. I prepared here a statement, No. 2, of the total freight earnings of the Chicago & Northwestern Railway Company for the year ending June 30th, 1905, $39,863,918.26; earnings on cattle and hogs approximately, $3,500,000; earnings on packing house products and fresh meats approximately, $320,000.

Q. How does that amount paid by your Company for loss and damage and delay for live stock and the amount paid for injuries paid to parties traveling in charge of live stock compare with the amount paid for loss and damage to packing house products and fresh meats?

(The statement produced by the witness in answer to the previous question was marked "McCullough's Exhibit No. 2," and filed with the court as a part of the testimony of said witness.)

1290*a* STATEMENT No. 2.

For the Year Ending June 30th, 1905.

Total freight earnings	$39,863,918.26
Earnings from cattle and hogs, approximate	3,500,000.00
Earnings on packing house products and fresh meats, approximate	320,000.00

McCullough Exhibit No. 2, vol. 11, p. 1290.

A. The amount- paid by our Company for loss and damage on live stock, dressed beef and packing house products of course vary from year to year; the average payment per annum for the last three years was on live stock $63,000; personal injuries, amount of claims paid to parties in charge of live stock, $25,000; total, $88,000. And the amount of claims paid for loss and damage on dressed beef and packing house product averages $5,000 per year.

1291 Q. Are the rates on cattle and hogs from Sioux City and Omaha and from other points on your road affected by competition?

A. A very large per cent. of our tariffs on live stock are fixed by competition. That is especially true of the Missouri River and adjoining territory.

The COURT: Did you make any settlements with the S. & S. Company?

A. No, the S. & S. do not do any business at any point reached by the Chicago & Northwestern Railroad.

Mr. LYNDE: We do not have anything to do with them.

Mr. BAXTER: Are the through rates on cattle and hogs from points of shipment on your road to the final destination greater or less than the sum of the local rates?

A. The shipments of live stock from a station to an intermediate station and the rate from that intermediate station to destination would in each case be higher than the through rate.

Q. What is the established minimum car load rate on cattle and

hogs respectively, and how does the actual lo-ding of cattle cars on your road compare with the minimum?

A. I have a statement here showing our established minimum on different sized cars.

Q. Will you file that as an exhibit?

1292 A. Yes, sir. It is taken from our printed tariffs and reports that we have.

(The document produced by the witness was marked "McCullough's Exhibit No. 3," and filed with the Court as a part of the testimony of said witness.)

1291a STATEMENT No. 3.

The actual loading of all cars of live-stock moved over our road show- at lease, nin-ty (90) per-cent. up to or above the established minimums which are as follows:

Live Stock.

Where rates are quoted in cents per 100 lbs., the following minimum weights will govern in either common or patent stock cars:

Length of cars, inside measurement.	Cattle.	Hogs, double deck.	Sheep, double deck.	Hogs, single deck.	Sheep, single deck.
31 feet and under.....	19,000	19,000	19,000	15,000	10,000
Over 31 feet, to and including 33 feet 9 inches.....	20,500	20,500	20,500	16,000	11,000
Over 33 feet 9 inches, to and including 36½ feet.....	22,000	22,000	22,000	17,000	12,000
Over 36½ feet, to and including 40 feet...	24,000	24,000	24,000	19,000	14,000
Over 40 feet	26,000	26,000	26,000	21,000	16,000

Number of stock cars in use, about 5,000. Length 36 feet.

McCullough Ex. No. 3, vol. 11, p. 1291.

Q. You need not read that, to save time, just file it as an exhibit to your testimony.

A. Yes, sir. Statement No. 3 shows the established minimum on our various sized stock cars and the report we have is that about 90 per cent. of our shipments are loaded in excess of the minimum provided for in this statement—Statement No. 3.

Q. How do the rates in cents per hundred pounds from various stations on your road on cattle and hogs compare with the rates on other live stock shipments from said stations on your road?

A. Statement No. 4 (producing a statement). This statement shows the rates on live stock, agricultural implements, stoneware, fifth class freight, wool, machinery, between Chicago and 10 or 15 stations on the Northwestern Railroad which are shown, your Honor, very plainly on that map (producing a map). The first statement

shows the rates on live stock and the articles mentioned between Chicago and Bellefourche, South Dakota and Casper,
1293 Wyoming. The next statement shows the rates between Chicago and Eagle Grove, Iowa, the next statement between Chicago and Maurice, Iowa, the next statement, between Chicago and Ireton, Iowa; the next statement between Revere, Minnesota, and Chicago; the next statement between Chicago and Sanford, Minnesota; the next statement between Chicago and Whitewood, South Dakota; the next statement between Chicago & Huron, South Dakota; the next statement between Chicago and Council Bluffs and Omaha. The statement shows that the rates on all the commodities named in these statements is greater than it is on live stock, the rate in cents per hundred pounds.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 4," and filed with the Court as a part of the testimony of said witness.)

1293a

1293b

McCULLOUGH'S EXHIBIT No. 4, Vol. 11, p. 1293.

STATEMENT No. 4.

Rates Between Chicago and Bellefourche, South Dakota.

Mileage, 1069.7 Miles.

Date.	Cattle.	Hogs.	Sheep. S. D.	Sheep. D. D.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool, in grease.	Machinery.
Aug. 10, 1897.....	48	65	63	55	1.25	95	1.30	$1.30		
Mar. 8, 1902.....	48	65	63	55	1.25	95	1.22	$1.22	$1.42	1.27
Dec.,—, 1902.....	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
Jan. 15, 1903..... ..	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 9, 1903.....	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
July 20, 1903.....	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
Nov. 16, 1903.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 4, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 16, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 22, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
May 9, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
June 10, 1904..... ..	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Jan. 21, 1905, present rate.....	48	65	...	55	1.25	95	1.22	1.22	1.42	.75

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STATEMENT No. 4.

Rates Between Chicago and Eagle Grove, Iowa.

Mileage, 369 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900.....	23½	23½	25	26	24	24	24	42	29
Jan., 1902.....	23½	23½	25	26	24	24	24	42	29
Aug., 1903.....	23½	23½	25	26	24	24	24	42	29
June, 1904.....	23½	23½	25	26	24	24	24	42	29
Present rate, 1905,	23½	23½	25	26	24	24	24	42	29

1293d

STATEMENT No. 4.

Rates Between Chicago and Maurice, Iowa.

Mileage, 496 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900	25	23½	30	31	27	27	27	45	32
Jan. 20, 1902..	25	23½	30	31	27	27	27	45	32
Sept. 13, 1902	25	23½	30	31	27	27	27	45	32
Feb., 1904	25	23½	30	31	27	27	27	45	32
March, 1904.....	25	23½	30	31	27	27	27	45	32
May, 1904	25	23½	30	31	27	27	27	45	32
June, 1905.....	25	23½	30	31	27	27	27	45	32

1293e

STATEMENT No. 4.

Rates Between Chicago and Ireton, Iowa.

Mileage, 504 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900.....	25	23½	30	31	28	28	28	46	33½
Jan. 20, 1902.....	25	23½	30	31	28	28	28	46	33½
Sept. 13, 1902	25	23½	30	31	28	28	28	46	33½
Feb., 1904.....	25	23½	30	31	28	28	28	46	33½
May, 1904.....	25	23½	30	31	28	28	28	46	33½
June, 1905.....	25	23½	30	31	28	28	28	46	33½

1293f

STATEMENT No. 4.

Rates Between Chicago and Revere, Minnesota.

Mileage, 496 Miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900	29	31	32½	30	27	28	28	46	30
Feb., 1904.....	27	30	32	30	27	28	28	46	30
May, 1904.....	27	30	32	30	27	28	28	46	30
June, 1905	27	30	32	30	27	28	28	46	30

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1293*g*

STATEMENT No. 4.

Rates Between Chicago and Sanborn, Minnesota.

Mileage, 483 Miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900.....	27	30	31½	30	25	26	26	46	30
Feb., 1904	27	30	31½	30	25	26	26	46	30
May, 1904.....	27	30	31½	30	25	26	26	46	30
June, 1905.....	27	30	31½	30	25	26	26	46	30

1293*h*

STATEMENT No. 4.

Rates Between Chicago and Whitewood, South Dakota.

Mileage, 1050.8 Miles.

Date.	Cattle.	Hogs.	Sheep. S. D.	Sheep. D. D.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
Aug. 10, 1897.....	48	65	63	55	1.18	89	1.22	1.22		
Mar. 8, 1902.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Dec. 22, 1902.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Jan. 15, 1903.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Feb. 9, 1903.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
July 20, 1903.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Nov. 16, 1903.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
Feb. 4, 1904.....	48	65	..	55	1.20	92	1.22	1.22	1.42	.75
Feb. 16, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
Feb. 22, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
May 9, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
June 10, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
Present rate, 1905..	48	65	...	55	1.20	92	1.22	1.22	1.42	.75

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1293*i*

STATEMENT No. 4.

Rates Between Chicago and Huron, South Dakota.

Mileage, 646 Miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
May 21, 1900.....	43½	48	48	45	40	42	42	75	45
June 21, 1900.....	43½	48	48	45	40	42	42	75	45
May 10, 1902.....	43½	48	48	41	36	37	37	67	41
June 20, 1902.....	43½	48	48	41	36	37	37	67	41
Aug. 28, 1902.....	43½	48	48	41	36	37	37	67	41
Oct. 9, 1902..... ...	43½	48	48	41	36 §	37	37	67	41
May 11, 1903.....	43½	48	48	41	36	37	37	67	41
Dec., 1903	43½	48	48	41	36	33½	37	67	41
Feb. 20, 1904.....	43½	48	48	41	36	33½	37	67	41
May 9, 1904.....	43½	48	48	41	36	33½	37	67	41
July, 1904.....	43½	48	48	41	36	33½	37	67	41
Present rate, 1905..	43½	48	48	41	36	33½	37	67	41

1293*j*

STATEMENT No. 4.

Rates Between Chicago and Council Bluffs and Omaha.

Council Bluffs Mileage..... 489 miles.
Omaha Mileage ..... 505 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900	23½	23½	25	30	27	27	27	45	32
Jan. 7th, 1904.....	23½	23½	25	30	27	27	27	45	32
Feb. 16, 1904.....	23½	23½	25	30	27	27	27	45	32
June, 1904	23½	23½	25	30	27	27	27	45	32
Present rate.....	23½	23½	25	30	27	27	27	45	32

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Q. How do the rates on cattle and hogs to Chicago from points intermediate between the Missouri River on the one hand, and Chicago on the other compare with the rates charged by other railroads for similar distances in the territory reached by the Chicago & Northwestern Railway for the transportation of cattle and hogs from other points of shipment to other points of destination?

A. Statement No. 5. Your Honor, these stations are shown on that map with a cross, (referring to the map heretofore introduced).

1294 I have taken ten stations intermediate between Chicago and the Missouri River in Iowa. I have shown the distance to Chicago and the rate charged on live stock. I have taken a comparison from stations west of the Missouri River into Omaha; from stations in Minnesota to St. Paul; stations north and northwest of St. Paul over the Great Northern, and Northern Pacific and other roads which shows the rates charged from those intermediate points in Iowa to Chicago and the rates charged from stations west of Omaha into Omaha; west and northwest of St. Paul. It shows that the rate from these intermediate stations between Chicago and the Missouri River to Chicago are less than the rates charged into Omaha and into St. Paul from stations corresponding distances from those points.

Q. Have the rates on cattle and hogs from stations on your road been so high as to prevent the shipment of cattle and hogs or have such shipments moved freely over your road in competition with cattle and hogs moved from similar markets in other portions of the United States?

A. There is some live stock, I think, driven to large markets, like Sioux City, from nearby territory; but I think the shipments are very few, and I do not think they are driven on account of the freight rates charged by the railroads.

1295 Q. Are the rates on cattle and hogs so low as to induce the shipment by rail?

A. Yes, sir, our live stock business is increasing right along.

The COURT:

Q. Do you think the change of these rates in the summer of 1902 made any difference in shipments either way, did you see it in your shipments?

A. Your Honor, I don't remember the change you speak of.

Q. When this rate was made and live stock was lessened and the products were cut down, did you see any difference in the shipments to Chicago or Council Bluffs?

A. I have a statement here that will show the movement.

Q. What does that show, does that show any difference before or since?

A. I have forgotten how the statement shows.

Q. In other words, suppose this rate is put back on dressed meat and products of cattle and hogs, would it make any difference in the shipments?

VERTICAL IN BOOK

A. I don't think it would. I have a statement here that the territory on the Northwestern that the packers seem to—the packers at Sioux City, Omaha and Chicago, as well as the Stock Yards Company at those points, and also the commission firms located at those points in the territory where we have not been very successful in adjusting our tariff so as to satisfy them all, is from 75 to 100 miles east of Omaha and east and northwest of Sioux City. I have a statement here from that territory which shows the rates to
1296 Omaha, the rates to Sioux City, the rates to Chicago; shows the movement from each station for one year previous to July 1st, 1905; shows the total movement to Omaha, the total movement to Sioux City and the total movement to Chicago.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 5," and filed with the Court as a part of the testimony of said witness.)

To Chicago, Ill., from—	Mi.	Cattle.	Hogs.	To Omaha, Neb., from—	Mi.	Cattle.	Hogs.	To St. Paul, Minn., from—	Mi.	Cattle.	Hogs.
De Witt, Ia..C & N W	157	15½	16½	Clearwater, Neb..C & N W	161	15	20	Appleton, Minn.. G N	155	16½	16½
Tama, " .. "	270	22	21	Johnstown, " .. "	270	20	26½	Montrose, S. D....C St P M & O	267	22½	21
Ames, " .. "	326	22	22½	Georgia, " .. "	328	23	30	Winside, Neb.... "	326	28	29½
Carroll, " .. "	396	23½	23½	Gordon, " .. "	396	25½	31	Bathgate, N. D... G N	393	23½	29½
Dunlap, " .. "	441	23½	23½	Chadron, " .. "	443	28	35	Canda, S. D.... "	440	26	33
Radcliffe, " .. "	329	22	22½	Max, " ..C B & Q	326	22½	28½	Winside, Neb... C St P M & O	326	28	29½
Lohrville, " .. "	388	23½	23½	Eckley, Col.. "	388	26½	34½	Randolph, " .... G N	388	28	29½
Ute, " .. "	457	23½	23½	Whitney, Neb..C & N W	458	28	37	O'Neill, Neb.... "	457	33	37
Mapleton, " .. "	460	23½	23½	Ft. Morgan, Col...C B & Q	460	29	39	Perth, N. D... "	460	26½	33½
Correctionville, Ia.. "	473	23½	23½	Ft. Robinson, Neb..C & N W	472	28	37	Barton, " ... "	476	25¾	33

McCullough's Exhibit No. 5, vol. 11, p. 1295.

Mr. BAXTER:

Q. How does the revenue derived by your Company from other car load freight, for instance coal, lumber or other low grade traffic compare with the revenue derived by your Company for transportation of cattle and hogs in a car of the same capacity between the same points or for a similar distance?

A. The average gross receipts that we receive on live stock between Chicago and Missouri River points in Western Iowa is about $45 per car. We would receive on a car of lumber from $60 to $65; we would receive on a car of coal from $60 to $70, that is about the difference between the gross receipts we are getting on live stock and other freight.

Q. What are the rates charged by your company on cattle and hogs, respectively, to Chicago, Illinois, from each intermediate point on its line between the Missouri River on one hand and Chicago on the other?

A. That is statement No. 6. That is our printed tariff which shows the rate from each station to Chicago.

1297 Q. Will you file that as an exhibit?

A. Yes, sir, I will.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 6," and filed with the Court as a part of the testimony of said witness.)

Q. What has been the volume of live stock for the year ending June 30th, 1905, over your road to Chicago, Sioux City and South Omaha, and what has been the volume received at those points over the other large railroad systems?

A. That is statement No. 7 (producing a statement). This is a statement made up from the report of the Stock Yards in Chicago, the Stock Yards at Sioux City and the Stock Yards at South Omaha.

The COURT: What does that show?

A. It gives the total receipts of live stock at Chicago, Illinois, the Union Stock Yards at Chicago; at Sioux City, Iowa, South Omaha, Nebraska for the years 1902, 1903, 1904, and the year 1905 up to August 1st, over the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, and all the lines hauling live stock to those various markets.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 7, and filed with the Court as a part of the testimony of said witness.)

1297a STATEMENT No. 7.

Number of Carloads of Live Stock Received at Chicago, Illinois.

Roads.	1902.	1903.	1904.	1905 to July 31st.
C. & N. W. R'y.....	65,654	61,706	62,601	39,706
C., M. & St. P. R'y...	57,407	60,456	58,833	33,758
C., B. & Q. R'y.....	47,589	56,255	55,365	30,959
C., R. I. & P. R'y.....	24,808	36,076	32,182	19,561
C. G. W. R'y.....	6,857	9,599	9,882	6,012
Ill. Cent. R. R.....	25,327	27,145	24,111	16,628
A., T. & S. F. R'y.....	9,301	12,783	8,651	4,065
Total	236,943	264,020	251,625	150,689
Via other roads.....	41,157	38,985	35,248	18,740
Grand total...	278,100	302,915	286,873	169,429

Number of Carloads of Live Stock Received at Sioux City, Iowa.

Roads.	1902.	1903.	1904.	1905 to July 31st.
C. & N. W. R'y.....	5,736	5,040	4,866	3,295
C., M. & St. P. R'y...	11,993	11,969	11,939	8,038
C., St. P., M. & O. R'y..	5,389	5,334	5,557	4,388
Ill. Cent. R. R	2,173	2,149	2,054	1,583
W. & S. F. R'y.....	3,498	3,546	3,555	2,962
Total	28,789	28,038	27,991	20,266

Number of Carloads of Live Stock Received at South Omaha, Nebraska.

Roads.	1902.	1903.	1904.	1905 to July 31st.
C. & N. W. R'y.....	22,749	25,374	23,612	13,826
C., M. & St. P. R'y...	3,070	6,774	5,104	1,503
Wabash R'y.....	806	843	623	227
Mo. Pac. R. R.....	1,648	1,756	1,604	1,084
Un. Pac. R'y.....	15,946	16,586	17,106	11,083
C., St. P., M. & O. R'y..	6,300	6,792	6,032	4,202
C., B. & Q. R. R.....	21,680	22,398	21,602	11,123
C., R. I. & P. R'y.....	6,203	4,918	3,446	2,347
Ill. Cent. R. R.....	1,190	1,067	865	758
C. G. W. R'y.....	.....	262	1,041	723
Total	79,592	86,770	81,035	46,876

McCullough's Exhibit No. 7, vol. 11, p. 1297.

Q. Are these South Omaha and Sioux City and other cattle
1298 markets to which live stock shipments on your road are shipped, of benefit or injury to persons raising and shipping cattle?

A. The more markets a person raising and shipping cattle has, the better it must be for him.

Q. What effect, if any, would the reduction of rates on cattle and hogs at points east of the Missouri River have upon the revenue rea-ized by your Company for the transportation of cattle and hogs?

A. If for any reason the rates on live stock from Council Bluffs and Omaha were to be reduced three and a half cents per hundred pounds or the rate from Sioux City be reduced five cents, it would be pretty hard to tell just what the exact effect would be upon the revenue of our road. It would disturb the rates out in that country and it is a good deal like a row of bricks, a reduction will get started and you never would know where it would stop. I have here a copy of our tariff leaving from all stations east of the Missouri River showing our present tariff rates.

Mr. ANSOM: Towards South Omaha?

A. No, this is our present tariff on live stock from stations east of the Missouri River.

Q. To Chicago?

A. To Chicago from the territory in which I think, and I think I know, the rates would have to be reduced if any reduction was made, at Council Bluffs and Omaha and Sioux City.

1299 I have shown in this tariff in red ink the reduced rates that I am satisfied we would have to put in force if this proposed reduction is made at Council Bluffs, Omaha and Sioux City.

The COURT: About where are those places, give a few examples?

A. I can show you on this map, your Honor, if you like, better. That would make it a little plainer to you, (showing map to the Court). Council Bluffs, Omaha, Sioux City—This map shows the Chicago & Northwestern Railroad and especially its lines from Council Bluffs east and Sioux City east. This reduction which I put into this tariff in red ink takes in nearly all, takes in the main line in Iowa as far east as Cedar Rapids, takes in all the stations north of the main line in Iowa, nearly all the stations in Minnesota, and some stations in South Dakota. If our movement in that territory for this year should be about as it was last, we figure that would mean a reduction in our gross revenue on live stock from $200,000 to $300,000 a year.

Q. Will you file that statement as an exhibit to your testimony?

A. Yes, sir, that is exhibit No. 9.

(The statement here produced by the witness, which is accompanied by a map, was marked "McCullough's Exhibit No. 9," and filed with the Court as a part of the testimony of said witness.)

1300 Mr. RANSOM:

Q. Do you file the map?

A. That ought to go with it, I think.

The COURT: How is that to be brought about, how would they force you to make those other reductions?

A. The fourth section of the Interstate Commerce law. We of course could not charge any more to the stations this side of Council Bluffs than the charge at Council Bluffs. The 23½ cent rate at present extends ¾ of the distance across Iowa. The Chicago & Great Western Road in putting in this reduction from Omaha goes through the Northern part of Iowa, through Mason City and Dubuque, and would reduce their rates all through the northern part of the state, and that would compel us to do the same thing. In Minnesota the reduction would be forced on us for the reason the roads running from Minnesota to Chicago would give a reduced rate to Chicago from their stations, and I take it would make the same reductions to St. Paul as is made over the other roads to Chicago.

Mr. BAXTER:

Q. State what the switching or terminal charge is paid by your Company on packing house products, fresh meats and live stock at Missouri River points?

A. I have that made in a statement, Statement No. 10. Live stock from points in Wyoming, the Nebraska Division of the Northwestern Road taken at South Omaha and reshipped on the
1301 Chicago & Northwestern road, our terminal charge at the Union Stock Yards is one dollar per car; fifty cents for unloading and fifty cents for re-loading; on shipments local from points in Nebraska to South Omaha Stock Yards we pay a dollar, fifty cents switching in and fifty cents for unloading. On fresh meat and packing house products in car loads from South Omaha over our road, we pay a terminal charge of $2. a car. That is Statement No. 10.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 10," and filed with the Court as a part of the testimony of said witness.)

1300c STATEMENT NO. 10.

South Omaha.

Live-stock from points on the Nebraska and Wyoming Division is taken to South Omaha Stock Yards at our local rate, and if reshipped to Chicago the billing is corrected to read through from original point of shipment to Chicago; the shipper getting the benefit of the through rate with no extra charge being made for the stop at the Stock Yards at South Omaha.

On this stock the expense to our Company at the Union Stock Yards is $1.00 per car; divided, 50 cents per car for unloading and 50 cents per car for reloading.

On shipments locally from points in Nebraska to South Omaha Stock Yards we pay $1.00; 50 cents switching in and 50 cents unloading.

Stock forwarded from South Omaha Stock Yards over our road, coming from points on the Union Pacific road, is forwarded to destination at through tariff from point of shipment on the Union Pacific road. The cost to our Company is 50 cents for reloading.

All other shipments of live-stock from the South Omaha Stock Yards over our road pays our full local rate to destination.

On fresh meats and packing house products in carloads shipped over our road terminal charge is $2.00 per car.

McCullough's Exhibit No. 10, Vol. 11, p. 1300.

Q. How many cars of packing house products and fresh meats were moved by your road from South Omaha and Sioux City during the year ending June 30, 1905?

A. That is Statement No. 11. (Producing a statement.) The number of cars of fresh meat and packing house products from South Omaha, Nebraska and Sioux City, Iowa, over the Chicago & Northwestern Railway from July 1st, 1904, to June 30th, 1905, inclusive, from Sioux City, 2535 cars and from South Omaha 3700; a total of 6235 cars.

Q. And will you file that statement as an exhibit?

A. I will, exhibit No. 11.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 11," and filed with the Court as a part of the testimony of the said witness.)

1300*d* STATEMENT No. 11.

Number of Carloads of Fresh Meat and Packing House Products from South Omaha, Neb., and Sioux City, Iowa, July 1st, 1904, to June 30th, 1905, Inclusive.

Months.	Sioux City.	South Omaha.	Grand total.
July	51	222	273
August	103	281	384
September	87	254	341
October	108	292	400
November	106	276	382
December	163	335	498
January	377	354	731
February	376	292	668
March	449	334	783
April	301	260	561
May	250	443	693
June	164	357	521
Total	2535	3700	6235

McCullough's Exhibit No. 11, Vol. 11, p. 1301.

1302 Q. Should your road attempt to charge higher rates on packing house products and fresh meats from South Omaha to Chicago and points east than are charged by the Chicago Great Western Railway under its contract with the packers, what would be the effect upon your traffic in packing house products and fresh meats?

A. We would abandon it to the other roads whose rates are less than ours.

The COURT: Do you get your share of the traffic now?

A. Yes, sir, the rates being the same.

The COURT: Well, they have a contract—the Great Western has, haven't they?

A. Well, we duplicate their rates, we seem to get our share of the business. This statement shows we have.

Q. How many people do they have contracts with, does the Great Western have contracts with?

A. I am not advised.

Q. You don't know. If they have a contract with all of them for all the product, how can you get any of the traffic?

Mr. LYNDE: Mr. Stickney's statement was there was a contract for a certain amount, a certain percentage.

The COURT: From certain points.

Mr. LYNDE: He don't state how much that was.

A. By duplicating their tariffs we were able to get 3700
1303 cars from South Omaha on our road.

Q. Now, Mr. McCullough, if you should attempt to raise your packing house rates so as to make them as high as your live stock rates, I understand you would have to go out of the business as long as the contract between the Great Western and the packers continued?

A. Unless all the other railroads did the same thing.

The COURT: Including the Great Western?

A. Yes, sir.

Mr. BAXTER:

Q. I say, so long as that Great Western contract stands, if your company or all of the other companies go out of the packing house business how would it help anybody that is interested in the situation, would not the Great Western Railway continue to carry it under its contract?

A. I think so.

Q. So the packing house product would still be carried by the Great Western Railway at the rates they now use?

A. Yes, sir, at the present rates.

Q. And the only effect of it would be to dr[illegible] you and the other lines that operate between the Missouri River and Chicago out of the packing house business?

A. We would retire from the business and turn it over to the Great Western Road.

Q. Have you cause to be correctly compiled a statement showing

the distances to Chicago and Sioux City, Iowa, respectively,
1304 from certain stations on the Chicago & Northwestern Railway south and east of Sioux City, with the straight rates from said stations to Chicago on cattle and hogs and the combination of the live stock rates from said stations to Sioux City, Iowa, plus the packing house products and dressed beef rate of 20 cents from Sioux City to Chicago, Illinois. If so, please file said statement as Exhibit A to your testimony and state briefly what it shows.

An adjournment was here taken until the following day, September 28th, 1905, at 10 o'clock A. M.

1305 THURSDAY, *September* 28, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon HIRAM R. MCCULLOUGH, resumed the stand for further direct examination by Mr. Baxter:

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Sioux City, Iowa, respectively between stations on the Chicago & Northwestern Railway south-east of Sioux City, the straight rates from such stations to Chicago, Illinois, on cattle and hogs and the combination of the live stock rates from said stations to Sioux City, Iowa, plus the packing house product and dressed beef rate of 20 cents from Sioux City, Iowa, to Chicago? If so, please file said statement as Exhibit A to your testimony?

A. I have a statement compiled as requested. It shows the rate on live stock from stations 70 to 60 miles south of Sioux City, 37 to 75 miles east of Sioux City. The rates on live stock to Sioux City and the rates on packing house products and dressed beef from Sioux City to Chicago and the direct rate on live stock from those
1306 stations to Chicago, showing that the adjustment is in favor of Chicago.

(The said statement so produced by the witness is marked Exhibit A, and is attached hereto.)

1306c McCULLOUGH EXHIBIT "A."

From stations south and east of Sioux City.	Distance to—		Straight rates to Chicago.		Rate to Sioux City.		Combination of the live stock rates from said stations — Sioux City plus P. H. P. rate — 20 cents from Sioux City.	
	Chicago	Sioux City.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Sargeants Bluffs, Iowa.....	510	7	24.5	23.5	5.53	6.00	25.53	26.00
Onawa	480	37	23.5	23.5	7.89	8.00	27.89	28.00
Mondamin.. ..	484	57	23.5	23.5	9.21	9.33	29.21	29.33
Moville.....	494	27	23.5	23.5	7.11	7.33	27.11	27.33
Correctionville..	473	49	23.5	23.5	8.68	8.67	28.68	28.67
Battle Creek....	445	73	23.5	23.5	10.	10.16	30.	30.16

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Sioux City respectively from certain stations on your road north and west of Sioux City, the straight rates from said stations to Chicago on cattle and hogs and the combination of the live stock rates from said stations to Sioux City plus the packing house product and dressed beef rate of 20 cents per hundred pounds from Sioux City to Chicago? If so, please file said statement as Exhibit B to your testimony and state briefly what it is.

A. I have such a statement. It shows the rates from stations north-west of Sioux City, distances 44 miles to 338 miles. It shows the rate on live stock to Sioux City and the rate on the product, Sioux City to Chicago and also the direct rates on live stock from stations to Chicago. The statement shows the adjustment in favor of Chicago.

(The said statement so produced by the witness is marked Exhibit B, and attached hereto.)

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13066 McCULLOUGH EX. "B."

From stations north and west of Sioux City.	Distance to—		Straight rates to Chicago.		Rates to Sioux City.		Combination of the live-stock rates from said stations to Sioux City plus P. H. P. rate of 20c. from Sioux City.	
	Chicago.	Sioux City.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Orange City, Iowa.....	490	44	25	23.5	8.29	8.33	28.29	28.33
Alcester, So. Dak.	522	75	25	26	11	11.9	31.	31.9
Hooker "	547	101	27	30	14	15.5	34.	35.5
Wolsey "	659	225	35	40	21 5	24	41.5	44
Redfield "	664	252	37	42.5	23	26	43	46
Oakes..No. Dak.	759	348	39	42.5	27	32.6	47	52.6

Q. Have you caused to be correctly compiled a statement showing the distance, Chicago and South Omaha respectively from certain stations on the Chicago & Northwestern Railway east of
1307 South Omaha, Nebraska, showing the straight rates from said station to Chicago on cattle and hogs and the combination of the live stock rates from said stations to South Omaha, plus the packing house product and dressed beef rate of 20 cents per hundred pounds from South Omaha, to Chicago? If so, file said statement as Exhibit C, to your testimony and state briefly what it shows.

A. I have such a statement. It shows the rates on live stock from stations 27 to 160 miles east of South Omaha, to South Omaha; the rates on the product, south Omaha to Chicago and the direct rates on live stock from the stations to Chicago showing the combination in favor of Chicago.

(The said statement so produced by the witness is marked Exhibit C, and attached hereto.)

1307a McCULLOUGH EXHIBIT "C."

From stations east of So. Omaha, Neb.	Distance to—		Straight rates to Chicago.		Rates to So. Omaha.		Combination of the live-stock rates from said stations to So. Omaha plus P. H. P. rate of 20c. from So. Omaha.	
	Chicago.	So. Omaha.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Missouri Valley, Iowa	467	27	23.5	23.5	8.52	9.29	28.52	29.29
Dunlap	441	54	23.5	23.5	10.49	10.96	30.49	30.96
Vail	415	80	23.5	23.5	11.81	12.45	31.81	32.45
Glidden	389	106	23.5	23.5	13.13	13.25	33.13	33.25

Q. Have you caused to be correctly compiled a statement showing the distances to Chicago and South Omaha respectively from certain stations on the Chicago & Northwestern, west of South Omaha, the straight rates from said stations to Chicago on cattle and hogs, and the combination of the live stock rates from said stations to South Omaha, plus the packing house product and dressed beef rate of 20 cents per hundred weight from South Omaha, Nebraska to Chicago? If so, please file said statement as Exhibit D to your testimony and state briefly what it shows?

1307b McCULLOUGH EXHIBIT "D."

From stations west of So. Omaha.	Distance to—		Straight rate to Chicago.		Rates to So. Omaha.		Combination of the live-stock rates from said stations to So. Omaha plus P. H. P. rate of 20 cents from So. Omaha.	
	Chicago.	So. Omaha.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Blair, Neb.	480	25	23.5	23.5	8	10.5	28.1	30.5
Nickerson, "	513	47	30.5	30	9.5	12.5	29.5	32.5
Dodge, "	541	74	30.5	34.5	10.5	14.5	30.5	34.5
Plainview, "	617	151	31.	37.	14	18	34.	38
Long Pine, "	718	252	39.5	43	19	25.	39	45

A. I have such a statement. It shows the rates on live stock from stations west of South Omaha, 25 to 50 miles distance
1308 to South Omaha, shows the rates on the product from South Omaha, to Chicago. It shows the direct rate on live stock from those stations to Chicago. The adjustment is in favor of South Omaha.

Q. In favor of what?

A. South Omaha.

Q. State whether there are any stations on the Chicago & Northwestern other than those mentioned in your Exhibits A. B. C and D, inclusive, with reference to which the rate adjustment is in favor of Chicago against the packing points covered by your exhibits?

A. Yes, there are a large number of stations intermediate between the stations named in those statements to Sioux City and South Omaha. The adjustment of the rates in and out of South Omaha and Sioux City, as compared with the direct rate to Chicago will show similar conditions of comparisons as shown by those statements.

Mr. LYNDE:

Q. You spoke of the effect of the reduction of rates, if we are compelled to reduce our live stock rates to Missouri river points and intermediate points to the basis of the packing house and dressed beef rates and have you made a statement as to what will be the amounts of revenue that will be lost to the Northwestern Company in that case?

A. Yesterday, yes sir. From $200,000.00 to $300,000.00 a year.

1309 Q. In that statement, did you include any reduction in rates west of the Missouri river?

A. None whatever.

Q. What will be the effect of any such reduction on rates of the Missouri river? Will it compel a corresponding reduction in those rates?

A. I would expect that those rates would have to be reduced.

Q. Just explain why, please?

A. Well, the through rates on live stock from points in Nebraska to Chicago are on a certain basis as compared with the rates on live stock from those stations to South Omaha; and the rates from South Omaha to Chicago. If the rates from points in Nebraska to Chicago are to be reduced to South Omaha by the reduction of the tariff from South Omaha, I would expect without doubt that the through tariff from points in Nebraska to Chicago would have to be reduced.

Q. The effect of the reduction on the rate in any territory spreads beyond that particular territory, does it not?

A. It does, yes.

Q. And that would apply here as to these rates?

A. Yes, it is uncertain whether the reduction would be west of the river or not.

The COURT:

Q. The through rate now is lower than the local rate. Why would you have to reduce that?

1310 A. I expect the shippers of live stock in Nebraska who desire to ship through to Chicago would make a demand on the railroads (whether or not it would be conceded, I do not know) that their through rate to Chicago should bear the same relative relation to the rates into Omaha and out of Omaha that they did before the Omaha rate was reduced.

Mr. LYNDE:

Q. And from intermediate points between Omaha and Chicago.

The COURT: Why would they be entitled to have that?

A. In my statement yesterday in figuring what the reduction would be, and what I knew would have to be made by our company, I left out our lines west of the Missouri river for the reason that it is uncertain to my mind whether there will be any reduction made there or not.

Q. If they would be entitled to it, the only reason would be that it is a longer distance, and it is a little cheaper to carry the longer distance than it is the shorter one?

A. No, the pressure would be brought on the railroad on this basis; that if the rate on live stock from Iowa and Nebraska is 30 cents, the rate from Omaha to Chicago should be 35 cents which would make the direct rate five cents less than the rates on Omaha. I think the shippers in Nebraska would demand and ask that the direct rate to Chicago still be 5 cents less.

Whether that demand would be met or not, I do not know.

1311 If it should be made on the railroads I don't know whether it would be conceded or not.

Mr. LYNDE:

Q. What is the amount or number of cars of packing house product and dressed beef that the Northwestern Company gets out of Omaha? I have lost your memorandum.

A. The figures were shown in my statement exhibited yesterday. I have forgotten just the number of cars. It is a very small percentage of the business, much less than our company think we are entitled to.

Q. You don't want to be understood as saying that the Northwestern Company gets what you would consider its fair proportion of that business determined on the basis of the facilities that it furnishes to that business?

A. I tried not to say that yesterday.

Q. I understood you to say that you did. You were asked whether you got your share of the business yesterday, I understood you to say that you did. Is that your view or not?

A. It is not. My recollection is that I was asked whether we had any of the traffic and I furnished a statement of the number of cars that we received.

Q. The total number of cars moved out of Omaha, do you know what that total amount is, east bound?

A. I do not know. It is in the statement I filed yesterday.

1312 Q. I don't mean the total number handled by the Northwestern, but the total handled by all the railroads?

A. No, I do not.

Q. Where would that appear?

A. In my statements of yesterday.

The COURT: He testified to that yesterday.

Mr. LYNDE: I mean the total number of packing house cars and dressed beef product moving eastward over all the roads from Omaha.

The COURT: Is that in your statement?

The WITNESS: No sir, I have not got that in it.

Mr. COWAN: Mr. Mahoney has been requested to furnish that statement and he will do so as soon as he gets it up, showing the total amount of packing house product and dressed meat products moving eastward. He will give the gross amount of revenue, also.

Mr. LYNDE:

Q. Now, you have made a statement as to the amount paid by the Northwestern Company for damage claims, both on the live stock and the personal injury claims to those accompanying live stock and the amount paid for damages to packing house products and dressed beef. Are those claims handled in your department?

A. No, sir, our company has a bureau known as the Claim Bureau in charge of a general claim agent.

1313 Q. Who is that?

A. Mr. R. C. Richards. The figures submitted by me were furnished me by the claim agent.

The COURT:

Q. Who did you say it was?

A. Mr. R. C. Richards, the claim agent and the figures furnished by me yesterday were from statements made for me by Mr. Richards.

Mr. LYNDE:

Q. I want to ask you whether, you of your own knowledge—I withdraw that question. I want to ask you whether you as the head of the traffic department of the Chicago & Northwestern Railway Company have at any time since the issuance of the injunction, and I think that was sometime in March or April, 1902, I am not quite sure of the date, by the federal court as to the payment of rebates, you remember the injunction?

A. Yes sir.

Q. Whether you have ever authorized the payment of any rebates to any of those packers, at any time since that time?

A. Since the injunction referred to, the handling of Interstate traffic over our road has had my personal attention. It has been under my personal charge.

There has been no freight of any kind, Interstate freight, moved

over our road since that injunction at any rates different from the rates shown in our printed tariff, that is with the packers, as well as with any other shippers.

Q. Have you ever authorized the entertainment of any fictitious claim for damages on packing house product or dressed
1314 meat for the purpose of paying rebates?

A. I never have.

Q. I think you said you had made no settlements with the S. & S. You understood by that that that referred to the fact that certain officers of the S. & S. Company had pleaded guilty here recently in the Federal Court to a conspiracy to obtain rebates by presenting fictitious claims. Now, independently of S. & S., and I understand that means Swarzschild & Sulzberger Company, have you ever *has* head of the traffic department, in charge of that business of the Northwestern Railway Company, authorized the payment of any money to the packers of fictitious claims for damages, for the purpose of paying rebates?

A. Never have.

Q. Now would any one else connected with the Chicago & Northwestern Railw-y Company in its transportation business or its traffic business have authority to do that besides yourself?

A. They would not.

Mr. BAXTER:

Q. There is one question that I had a memorandum of but which I overlooked. Are any packing house products moved in carloads from any point between the Missouri river or St. Paul and Chicago on your road unless there be packing houses at such intermediate point?

A. I did not catch that.

1315 Q. Are there any packing house products moved on the line of your road from any of your intermediate stations between the Missouri river and Chicago, except from such points as have packing houses located at them?

A. No sir, there would be no traffic of that kind forwarded over our road except where these packing houses are constructed and are slaughtering cattle.

The COURT:

Q. Don't you carry packing house products and dressed meats to these different points?

A. The Judge's question was from.

The COURT: Don't you take carloads to some of these towns?

A. I understood the Judge's question to be in respect to our stations. We, of course, would receive packing house products and dressed meat in less than carload lots, possibly in carloads at stations on our road.

Mr. BAXTER:

Q. Are any of them shipped in car loads from any intermediate point on your road where there are not packing houses located.

A. No sir.

Mr. LYNDE:

Q. There is a movement of packing house product from Chicago to points in the north.

A. Yes sir.

1316 Mr. LYNDE: I don't know whether the Judge's question would include that or not.

Mr. BAXTER: No, I was only dealing with the intermediate stations.

Mr. LYNDE: That is up into the lumber camps?

A. That traffic moves largely from the stock yards at Chicago.

Mr. RANSOM:

Q. I understood you to say that if the 23½ cent rate on live stock from the Missouri river were reduced, there would be a necessity for reducing the rates into Sioux City and Council Bluffs, is that correct?

A. No sir.

Q. What was your statement in regard to that, I understood you to state that?

A. This morning?

Q. No, yesterday. If the 23½ cent rate were reduced it would work a dislocation of those rates, a displacement of the adjustment of the rates.

A. At the present time the rates on live stock in the district that I refer to in northwestern Iowa—we, of course, have a certain tariff on live stock from all of those stations to Sioux City. We have a tariff to South Omaha. We have a tariff from those particular stations to stations this side of those stations in Iowa, to Chicago.

1317 The statement I have filed this morning shows that the rates from these stations into South Omaha and into Sioux City would indicate that Chicago,—as compared with the direct tariff on live stock, it shows the adjustment is in favor of Chicago.

If those rates should be reduced for any reason, 3½ cents to Chicago, it would show in favor of Chicago 3½ cents better than it was before.

Q. That would be a discrimination against South Omaha and Sioux City?

A. It would be in favor of Chicago 3½ cents more than it is to-day.

Q. And to that extent a further discrimination against Missouri river points?

A. Those rates as they are today are a discrimination.

Q. Don't the railroad companies charge the same on packing house products from Chicago to the Pacific Ocean that they do from Missouri river points?

A. I could not answer that without looking it up.

Q. Well, what department of your road would we have to go to in order to ascertain that?

A. You would have to inquire from our Tariff Bureau.

Q. Could you ascertain that rate and state it?
A. Yes sir.
Q. If you will do that I will be much obliged.
A. Your question is how the rates on packing house products from Chicago to the Pacific coast——
1318 Q. No, no. Don't the railroad company charge the same rate for packing house product from Chicago to the Pacific coast as they charge from Missouri river points on the same product? Isn't the rate the same from Chicago to the ocean as it is from the Missouri river?
A. I can have that prepared for you.

Mr. BAXTER:

Q. Is there any commodity that moves from New York via Chicago to the Pacific ocean?
A. From New York?
Q. Yes.
A. I believe there is, yes sir.
Q. I wish you would take any commodity that actually moves from New York to the Pacific Ocean and if you can find any that moves to Asiatic points and give me the through rate from New York to the Pacific Ocean. New York to Yokohama if you can, with the division of the different lines of that rate?
A. Any traffic that is moved?
Q. Any commodity that moves.
A. In carloads?
Q. In carloads or otherwise, if you have got any carload traffic. I want to show the difference between the through rates and the divisions of the other rates. Your Honor will allow me to recall the witness. I am nearly at the end of my case and I don't want to stop now for it.

The COURT: Certainly.
Mr. BAXTER: Mr. Ransom said he wanted to introduce a
1319 witness at this point, didn't he?
Mr. RANSOM: I thought we would wait until Mr. Cowan got through with the cross-examination.

Cross-examination by Mr. COWAN:

Q. In making the statement on the Pacific coast traffic, include some principal things like nails, for example, from Pittsburg, and steel rails and things of that sort that are shipped very extensively from Pittsburg, such as locomotives and the like, railroad material.
A. It would assist me if I could be given a memorandum of the articles you would like to have.
Q. Well, take railroad supplies and nails.
A Yes.
Q. Mr. McCullough, do you believe as a traffic man from your experience, that in order to determine the proper relative rates between dressed meat and packing house product, that there should be deducted from the rate from the point from which the packing house buys its supply, the local rate into such market, like the

Missouri river, in order to arrive at what ought to be charged on the packing house product? Do you think that ought to be the fact?

A. The way I have tried to handle that matter——

Q. I would be awfully pleased if that question is answered
1320 and then your explanation made afterwards. Do you believe, for example, that you ought to deduct what it cost to ship through Boone, Iowa to Omaha from the rate on live stock to Chicago from Boone, in order to give you the basis of rate on the product from Omaha to Chicago?

A. If there is a packing house at South Omaha which wishes to purchase hogs or cattle at Boone, Iowa, to-day, we do what we can to adjust our rates from Boone to South Omaha, and South Omaha to Chicago so as to put him as near as possible on an equality with the packer at Chicago who would ship those cattle and hogs direct.

Q. The equality for what, to do what? The equality where, in what market?

A. South Omaha *vs.* Chicago.

Q. Now, suppose that in points equally distant between the Missouri river and Chicago there is a consuming market for the product of live stock, do you not believe that Chicago is equally entitled to participate in selling on that consuming market, to Omaha?

A. If we had an application from Chicago——

Q. How is that?

A. If we had an application from a packer at Chicago to try and do that, we would investigate it carefully. If we thought it was something that he ought to have we would try to regulate our rates so as to make it fair for him.

Q. Is it not a fact that Chicago does not ship westward
1321 packing house products and dressed meats in any considerable quantity?

A. No sir, I think that trade is all held by packing houses west of the Mississippi river.

Q. It could not possibly be otherwise on the present adjustment of rates, could it?

A. That is correct.

Q. Do you say that the packing houses ought to be entitled to ship the dressed carcasses from the Missouri river to Chicago cheaper than the live stock men can ship the live animal?

A. I did not.

Q. Do you contend that the packer on the Missouri river ought to have the right to ship the dressed carcasses to Chicago via Boone, cheaper than the live stock man can ship from Boone, the live animals to Chicago?

A. I did not so state.

Q. Is it not a fact that if a packer can ship the dressed carcass from the Missouri river cheaper than I, a feeder at Missouri river, can ship the live animal, that that gives to the packer an advantage to that extent over me, if we both have to market our products in the east at Chicago or eastward?

A. I am not sufficiently well, posted in reference to the dressed beef business to answer that question.

Q. Does the fact that a large volume of traffic from the Missouri river moves eastward through the Mississippi river gateways—it is a fact that it moves that way for consumption, isn't it?

1322 A. That is the only outlet they have over our road.

Q. Commercially it seeks that direction, doesn't it?

A. Well, I could not say.

Q. Well, if you were adjusting those rates to give an equality between them, you must have taken that into consideration?

A. The only outlet for packing house products at Sioux City and South Omaha, as for its shipment over our road, is through the Mississippi river at Clinton, Iowa.

Q. Isn't it a fact that the great volume of the business seeks a market east of the Mississippi?

A. All that we have moved, it is. I don't know about the movement on the other roads.

Q. If I am feeding cattle, for example, in the vicinity of Omaha or Sioux City, and I desire to ship those cattle to Chicago, to market, I have got to pay 3½ cents more per hundred pounds than the packer would pay on the dressed carcasses.

Q. Doesn't that give him a commercial advantage to that extent over the shipper of the live stock?

A. Well, I have stated, but I am not sufficiently posted in the dressed meat business to know whether it is a fact or not.

Q. In your opinion as already expressed, as I understand

1323 it you do not claim that the packer should have a lower rate on the dressed product than the live stock man has on his live stock from the same point or from the intermediate points?

A. I have not so stated.

The COURT:

Q. What is your judgment about it?

A. My general observation and the information that has come to me from time to time, I think our present rates on dressed beef and packing house products, our present rates on live stock from Missouri river points and all the territory that is tributary to the Missouri river are lower than they should be.

As to what differences should be made in those rates so as to make them fair and reasonable to the railroad and to the shipper, in cents per hundred pounds, I am unable to say.

As to the relative difference in the rate between dressed beef and packing house products and live stock, I am thoroughly satisfied in my mind that there should be a difference, that the rate on live stock should be higher than the rate on dressed beef and packing house products. What that difference should be in dollars and cents, I could not state to-day.

Q. How does it happen that the practice has been otherwise in all the history of other railroads and in the history of your

1324 road up to this time?

A. In 15 or 18 years, our company of its own free will has never changed a rate on dressed beef or packing house product or live stock from the Missouri river points to Chicago. The rates

that we have had in force from time to time are the rates established at those points by other roads. The rates on dressed beef and packing house products from time to time seem to have been made by other roads for our company, with very little, if any regard to the rates on live stock or the rates on any other kind of freight.

Mr. COWAN:

Q. You ship dressed meat and packing house product in carloads to Deadwood, South Dakota and Omaha?

A. We have a railroad there, and I suppose we do, yes sir.

Q. Your rate on the dressed meat and packing house product is higher from Omaha to Deadwood on dressed meat and packing house product than it is on live stock to Belle Fourche over the same line, 25 or 30 miles further on?

A. I could not say.

Q. It is higher than the rate on live stock from Belle Fourche or from the vicinity of Deadwood—there being none loaded probably right in Deadwood—back to Omaha in the reverse direction, isn't it?

1325 A. That would be so, yes. In answering your first question, we have a railroad from South Omaha to Deadwood. I have not with me today the records of our rates on dressed beef products and packing house products and live stock.

If we should have a tariff from South Omaha to Deadwood on dressed beef and packing house products that is higher than our rate on cattle and hogs, it would be no discrimination, I think, or no basis as to fixing a comparison between the rates on cattle and hogs and the rates on dressed beef and packing house products, as I am satisfied there has never been a car of live stock shipped from South Omaha to Belle Fourche since the road was built. I don't think cattle move between those points west bound. If there was cattle moving between those points west bound, the probability is we might have another adjustment of the tariff on live stock.

Q. Isn't it a fact in the movement of range stock that comes from the Pan Handle of Texas to the Belle Fourche territory, that you take it either at South Omaha or at points very near by and carry it out to Belle Fourche and unload it by the hundreds and thousands of carloads?

A. I think the stock you refer to is all handled on through tariff from Texas to Belle Fourche. I am sure, though I cannot say positively, but I am sure that you will not find, since our road was built, that there has been any cattle or live stock moved at our local rate from Omaha to Belle Fourche or the Belle Fourche district.

Q. Well, you ship in the reverse direction?

1326 A. Yes, sir.

Q. Now, you don't ship live stock from Chicago to South Omaha?

A. I don't think we ever did, I never heard of such a movement.

Q. But if you were going to adjust the rate in the reverse direction, if the volume of traffic would justify it, you would make it on a different basis?

A. What we would do in reference to the transportation of live stock from Chicago to South Omaha, would be decided when the traffic was offered.

Q. Is there any basis on which you make rates? Have you any factors that you can tell the Court that you are governed by in the rates which you publish?

A. At every hearing that I have been present at since the Interstate Commerce Law took effect, either before the Interstate Commission or before the United States Court, that has usually been the first question that is asked a traffic official, and, to a great many traffic men I think it is a kind of a nightmare.

In making the rates on the 8,000 miles of railroad with which I am connected, there are three features, three conditions that fix about every rate we have in force on our road.

1327 First, is competition. One time our company thought that when a rate was made by a competing road that was less than our company thought we could do the business at, we thought for awhile that it was not necessary for us to meet those reduced rates. Take a country station, for instance, where there is a local station on our road, and a local station on a competitive road, the stations being six or eight miles distant.

We found that the farmer would, of course, drive his live stock and sell it at the station where he would get the most money for it. If the rate from our station was higher than the rates from the competing stations on the other road, he gets a better price, of course, on the other rate, and the live stock, instead of being driven to our station was driven to the station on the other road. We found that where the farmer sold his cattle he sold his grain, provided he could get as much money for his grain at the station where he sold his cattle as he could at other markets. We found that where he sold his cattle and grain he also sold anything else, the product of his farm. We also found that where he sold his cattle and his grain and his farm products, he bought his lumber, and he bought his coal, and he bought his dry goods and his groceries, provided they were sold as cheap at that station as they were at the station on the other road.

1328 Since that time it has been the policy of our company to adopt at our stations rates on freight of all kinds, particularly live stock or freight that can be moved readily from one part of the country to another, the rates adopted by our competitors, without regard to whether the rates were what we considered remunerative or whether they were otherwise.

That, I think, illustrates how the tariffs, 80 per cent. of the rates now in force on the 8,000 miles of road I am connected with, are adjusted.

Mr. LYNDE: You spoke of that as the first element.

A. The second element is commercial conditions. We have today, for instance, regularly established tariffs from one station on the Northwestern road to another station, 50 miles or 100 miles, or 250 miles apart. We may find today some traffic offered to our company or some traffic we may secure at one station on our road to move to

another station where our present tariff is prohibited and more than the traffic would stand and leave any profit to the owner or shipper. That brings around a conference between the shipper who has this freight to ship, and our company. As a rule, almost without exception, before our conference is finished, we agree with that shipper on what would be a fair rate on the traffic referred to; the tariff is published, the rate is put in force and that becomes what is
1329 known in railroad circles as "a commodity tariff."

The COURT: The point about that is that you fix him a tariff so that he can make something in his business?

A. Our point is this, that we have a tariff today that we think is a fair rate to everybody. A man comes along and satisfies us that he has a lot of freight to move and that he cannot move it on our present tariff. We have a conference with him and we find out what the freight is worth. Sometimes he tells us what it costs him and sometimes he tells us what profit he is satisfied with and what he can get at destination, whether it be 100 or 150 miles, and that results in a tariff, a special tariff covering that particular commodity from that particular station to another particular station on our road. That tariff, of course, is subject to the provisions of the Interstate Commerce law, and particularly the fourth section of that law. It is, of course, published and becomes what is known as a commodity tariff to that man and to all men.

Q. You publish that rate under the Interstate Commerce law?.

A. Yes, it is especially for that man but it becomes an open tariff for all.

Q. Unless you establis*j* that to every other place——

A. Well, it would, of course, apply to intermediate stations.

1330 Mr. SEVERANCE:

Q. On the long and the short haul?

A. Yes, sir.

The COURT: Well, now, what is your third element?

A. I guess I have covered my third reason in the second.

Q. The first is competition and the second is the commodity tariff.

Mr. LYNDE: Let me suggest how about the cost of handling the business itself? Was that your third element?

A. How is that?

Q. The cost itself of the transportation service. You haven't referred to that and I wondered whether that was not your third element that you had in mind.

A. No, sir, competition settles our tariff and we meet the tariffs of other railroads now without figuring whether it is profitable or how profitable it is, and so forth.

The COURT:

Q. Suppose there is not any competition and there is not any commodity tariff, how do you get at what you ought to fix it at?

A. Well, we would have a tariff there today. If the shipper had the commodity to move and the tariff we had in force is, in his

opinion, too high, that results in the ship-er coming to the railroad.

Q. That results in your commodity tariff?

A. Yes, sir, that results in the commodity tariff.. There
1331 is a third feature which I think the best name for is the "Experimental tariff." Our company would construct and open for business, for instance, on the first day of next month 150 miles of new railroad. That may be up in the Lake Superior country or it may be our in Wyoming.

When we are notified that that 150 miles of road are finished, we open for business on a certain day. We, of course, take the necessary steps to prepare tariffs for the transportation of freight between all stations on that 150 miles of road of every station on our road.

In compiling these tariffs we would take into consideration the rates at competitive stations on our road or competitive stations on other roads, if there were any, and we would put in force a tariff taking effect the day the stations were open for business, that we would think was fair and was satisfactory to all parties.

That road would be opened for business and perhaps in a short time afterwards, some one would go into the manufacturing business located on that road, manufacturing lumber for instance, or any other manufactured article, and looking at the tariffs, we would find that his tariff on wagons, for instance, if he was manufacturing those, to Omaha or some other point on our road, were too high, and were prohibited. That would result in a conference between that
shipper and our railroad and would result in an agreement
1332 between us as to what would be a fair rate, and the tariff would be issued accordingly. In that case we would find our experimental tariff on wagons was not correct. From time to time the probability is that we would have other freight offered going to those stations and coming from those stations, on which our tariff, experimental tariff, was out of line, was too high.

That would continue perhaps for a year and perhaps longer and finally our experimental tariff would be a thing of the past and we would have a regular standard tariff there which we would consider fair to all parties, the shipper as well as the railroad.

Q. Wouldn't you fix what it cost you to carry the stuff in those figures in your experimental tariff.

A. We would think that over, yes, sir.

Q. You would not want to lose money on it, on the business?

A. If we had a shipper that would come to us tomorrow with a lot of traffic to move to a station on our road, if he thought the present rate was too high, if we thought we could move it at a reduced rate, we would give him that reduced rate if we thought it was remunerative to our company.

If we were satisfied it was otherwise, we would decline the rate and decline to print the tariff.

Those three features, I think, have fixed the present tariffs that
are in effect on all the roads and at all the stations on the line
1333 of our road. I think I am justified in saying that they are reasonable for the reason that today, last month or last year or five years from now, or five years past, with the exception of an

occasional complaint which is a minor one, usually, we are without a single complaint from any single shipper. There are thousands of shippers who are shipping this freight over our road and that is particularly the case with reference to our tariffs on live stock, which are in force today at every station on our road.

If the live stock tariff on our road for the remaining three months of this year continues as it has in the past nine months, we will have moved over our road about 100,000 cars of live stock. If the live stock continues to follow that channel for the next few months than it has in the past nine months, of those 100,000 cars of live stock, 70,000 cars, or 70 per cent. will be transported to the Union Stock Yards at Chicago, leaving 30 per cent. to be moved to St. Paul, Sioux City, South Omaha, Marshalltown, Des Moines and Cedar Rapids, to the packing houses at those points and we are without a single complaint today. There are thousands of people who are shipping that live stock over our road on these rates that our company is charging without a complaint on a single car.

Mr. LYNDE:

1334 Q. In that period of time that you refer to, has this country that has been served by your road, either in this territory or elsewhere, progressed and developed, or what has been its progress?

A. You mean the live stock territory?

Q. Yes.

A. In my opinion the live stock industry on the 8,000 miles of railroad operated by the Chicago & Northwestern Railroad is as prosperous, and perhaps more prosperous, than any other line of business on our road. That is a general statement. I am not in the live stock business, but the business is increasing and the shipments are increasing, and from my talks with the shippers, which are very frequent, they seem to be pretty happy and contented.

Q. The country itself has developed, hasn't it, that whole country?

A. Yes, sir.

Mr. COWAN:

Q. Mr. McCullough, is it not true that your rates on practically all of the class goods and commodities are not made for the purpose, and do not, in fact, yield any uniform per cent. of profit or of gross revenue proportionate to the distance carried?

A. I don't think I can answer any question in reference to any rate in force on the lines of our road that is not covered in the general statement here as to how the rates were established and how they got there.

1335 Q. Now, is it not true that when each traffic man of each one of the roads is asked to state the basis of fixing the rates, he claims that competition with other roads is a very material factor in fixing those rates?

A. I guess I did not catch that.

(The pending question was then read.)

Mr. DAWES: I object to that.

Mr. LYNDE: The witness has made it one of his very first and leading reasons.

The COURT: Well, this is a little different. He asks him if they don't claim that. I guess he may answer.

A. Yes, generally one traffic fellow says it is the other fellow.

Mr. COWAN:

Q. The cost of transporting a particular traffic is always or practically always lessened, as a general rule, by the large volume of that traffic moving over the same line of railroad in regularity, is it not?

A. Sometimes, not always.

Q. Is it not true that when you are furnished with a hundred thousand carloads of live stock to handle on your road, and 70,000 cars of that comes to Chicago over these lines in question largely, that you would be enabled to give a very much lower rate to that

1336 large volume of traffic than you would to the volume of traffic that moves in comparatively few cars in the same or opposite direction?

A. From any station on the Chicago & Northwesten Railroad from which we would move a train load of cattle, we would also move a train load of grain.

I think the amount of grain moved over our road in tons is equal, and I believe would exceed the number of tons of live stock that we move. So that the grain is one commodity that we move by train load to any point where we would move live stock in train loads, and the gross freight charges we would receive on a car of grain would be several times the gross freight charges we would receive on a car of cattle of live stock.

Q. You are mistaken about its being several times, aren't you?

A. Yes; we receive on a car of live stock from the Missouri River to Chicago $45. We receive on a car of corn $80.

The COURT:

Q. Corn is the raw material?

A. Corn and oats.

Q. That is the raw material as compared with the live stock?

A. First, is the tonnage of live stock, and next, I say, the tonnage we have that moves in train loads similar to live stock, is grain.

Q. Is the rate higher on grain than it is on live stock?

A. Not in cents per hundred pounds. The average earn-

1337 ings on live stock from the Missouri River to Chicago on our road was $45 per car, that is, taking hogs and cattle and sheep. The rate on corn and oats is 15 cents. Those cars are loaded from 40,000 to 60,000 pounds. A load of 50,000 pounds would be $45 on live stock, and $75 for a car of grain. So my point is from any station on our road where we move live stock in train loads we would also move grain in train loads, the amount of tonnage of grain moved over our road will be as great if not greater than the amount of tons of live stock moved. Therefore, there is one commodity.

Also, we would move over our road, to and from any station where we move live stock in train loads, other train loads of freight,

not all loaded with one commodity, but mixed cars. In those mixed trains of dead freight, our tonnage would be per train largely in excess of the tonnage on live stock, and the gross earnings between Chicago and the Missouri River on a train load of dead freight of 25 cars of agricultural implements, and lumber and iron or coal, would be many times in excess of the live stock.

Q. How many cars of corn would you carry on a train?

A. About 25 cars.

Q. And how many of cattle?

A. I think the average train of cattle is about 25.

Q. You carry a great deal more weight in the grain train?

A. Oh, yes.

1338 Q. Do you go slower?

A. Yes, it is moved at our convenience.

Mr. COWAN:

Q. Your rate on grain is very much less per hundred pounds than your rate on cattle?

A. From what territory?

Q. Well, from this territory?

A. The difference between 15 cents and 23½ cents.

Q. You claim that the difference is made up by the fact that your loading in the grain car is an amount sufficient to make your receipts per car more on the grain than it is in the case of the live stock?

A. I understood your question to be that because our tonnage on live stock was so much in excess of the tonnage we had on any other commodity moving over our road, that therefore the rate on live stock on account of the large tonnage moved, should be less.

Q. Yes, I think your tonnage on live stock is very much greater than it is on grain.

A. That was your question, as I understood it.

Q. Yes. Now, the first question I asked you was whether you could not handle the live stock, when it comes in such large quantities, on a lower basis than you could on commodities which did not furnish that large volume of traffic, like agricultural imple-

1339 ments. You would not compare 100,000 cars of live stock and the rates that had to be made on that, to 5,000 cars of agricultural implements, would you? You would not base the rate on one to compare it with the other?

A. Twenty-five cars of cattle from the Missouri River to Chicago, —the gross freight charges collected would be,—that would be 22,000 pounds at 25 cents a hundred. That is between $45 and $50 per car.

Our operating department advise me that competition compels them to haul that train of live stock from the Missouri River to Chicago, in a certain number of hours. We have another train on a side track at Council Bluffs and Omaha loaded with 25 cars of grain. Those cars are probably loaded 50,000 pounds to the car. That would be, on 25 cars, $75 a car.

The Operating department advises me that to move that train of live stock with the train of grain, it could be moved in one train.

Mr. SEVERANCE: I would like to hear the last sentence of that answer read.

Mr. COWAN: I am cross-examining the witness.

Mr. SEVERANCE: I would ask, as a great favor, that Mr. Cowan would permit me to have that portion of the answer read.

(The answer was then read.)

1340 The WITNESS: Our Operating Department advises me that 25 cars of live stock, and the 25 cars of grain could be moved from the Missouri River to Chicago in a solid train with the same locomotive and the same train crew.

Mr. COWAN:

Q. Unless you can simply answer the questions that I ask you, I cannot proceed with the cross-examination. You make a great long statement in reply to each question as it is. I say this with all courtesy.

The WITNESS: Give me the question once more.

Mr. COWAN: I was not asking a question then.

The COURT: The witness will answer the question, of course.

Mr. COWAN: It will be impossible for me to proceed, otherwise.

Mr. LYNDE: You said that once, Mr. Cowan.

Mr. COWAN: I will be unable to proceed with the cross-examination.

Mr. SEVERANCE: Don't be so dissatisfied with his answers.

The COURT: That will be all of that. Go ahead and ask questions. Make your objections to questions and I will pass on them.

Mr. COWAN:

Q. It is a fact that your live stock traffic moves with more regularity per month than any other large volume of traffic mov-
1341 ing from that country to Chicago?

A. East bound?

Q. Yes.

A. No, I think the movement of grain is about in line with the live stock. When the grain movement is heavy I think the live stock movement is heavy; when the grain is light the live stock is light.

Q. Isn't it a fact that a large part of the grain moving from there by your road is moved on a proportional to the Mississippi River and the export rate from there?

A. I think we have a very large traffic, yes, sir.

Q. Isn't it a fact that in such cases, the rate, or rather the revenue received out of that division, would be very much less in proportion to the distance hauled than the local rate from such station to Chicago?

A. The highest rate that we can get on grain—Will you allow me to answer it in my own way?

Q. Yes, as briefly as you can.

A. I can say yes or no, if you prefer it.

Q. I don't mean to confine you to that.

A. The highest rate we can get on grain from Council Bluffs and

Omaha to the Atlantic Seaboard, is, of course, the local rate to St. Louis and the local rate from St. Louis to the Seaboard. Those two rates make a less rate from Council Bluffs to the Seaboard
1342 than our tariff from the Missouri River to Chicago and the current tariff from Chicago to the Seaboard.

Therefore, to equalize it and to enable us to make the same rates on export grain, all grain, but export grain especially, from the Missouri River points to the Seaboard, we have an arrangement with the lines east of Chicago whereby we bill that corn to the Mississippi River at Clinton, Iowa, on our road, at a rate in force to St. Louis, and we have a general tariff from Clinton, Iowa, to New York in connection with lines east of Chicago, making the same rate as made from St. Louis to New York.

That rate from the Mississippi River to New York, 140 miles over our road to Chicago, and a thousand miles from here to the Seaboard, is divided on agreed percentages arrived at mutually between our road and the lines east of Chicago.

Sometimes the rate that we make to the Mississippi River in our proportion of the tariff from the Mississippi River to New York is less than our local rate to Chicago and sometimes it is more.

The COURT: I guess that answers it.

The WITNESS: As a rule it is a fraction less.

Mr. COWAN:

Q. There is a proportional rate which applies on grain moving from the Missouri River through the Mississippi river gate-
1343 way of 9 cents per hundred pounds, isn't there?

A. I have forgotten the present tariff.

Q. And two cents less on corn. Do you know what the average revenue received by your road is for all the tons of freight it hauls per ton, per mile?

A. No, sir, I will have to confine my testimony here today to rates in force in the movement of traffic over our road; the movement of that traffic on the rates and tariffs provided; my judgment as to whether or not the rates are reasonable or unreasonable. I am not prepared today to go into the part of the operation of our road that is led up to by your question.

Q. The printed annual report shows whatever that is.

A. You will find all that in the printed annual report and I have no reason to think it is not correct.

Q. Isn't it a fact that if you compare particular commodities where you take a tonnage that is light on one commodity, and a tonnage that is very heavy on another, that you always find the rate established on the commodity furnishing the large tonnage, less than it is on the commodity furnishing the smaller amount of tonnage, assuming that they are at all similar in the character of the commodity carried?

A. I have told you in answer to the previous question how, in my opinion, every rate we have on our roads is established.

1344 Q. Do you run through any town that has a packing house in it between the Missouri River and the Mississippi?
A. Marshalltown and Cedar Rapids.
Q. Do you believe that——
Mr. SEVERANCE: Do you go to Des Moines?
A. Not on the direct line. We do business on our road, on our branch road there. His question was on the direct line.

Mr. COWAN:

Q. Do you believe that the live stock shipper ought to have to pay more on his live cattle from Cedar Rapids to Chicago than the packing house would have to pay on the dressed meat if it killed them?
A. Would you allow me to tell you how the rates are established to Cedar Rapids?
The COURT: Please answer the question first.

Mr. COWAN:

Q. I just want to know, if you please, if you believe that the live stock shipper ought to have to pay a higher rate on cattle than the dressed product of the cattle?
A. Yes; for the reason that the rate on dressed beef and packing house product from Cedar Rapids has nothing whatever to do with the live stock from that station.
Q. Does the live stock from Cedar Rapids have anything to do with the dressed meat traffic?
1345 A. Very little.
Q. In the case of the product of hogs?
A. Very little.
Q. Does the one rest upon the other?
A. At Cedar Rapids?
Q. Yes. Does the rate on hogs depend on the rate on packing house product, or *vice versa?*
A. None whatever.
Q. At the other packing towns on your line of road, aren't the rates on the one dependent upon the rates on the other?
A. You mean packing house product *versus* live stock?
Q. Yes.
A. No.

Mr. SHAVER:

Q. I believe you stated it to be your opinion that the rates now in force, both on the packing house product and the live stock, are too low?
1346 A. My statement was that it is my belief that we have to-day a rate on packing house products and that we have to-day a rate on live stock that is too low.
Q. That both are too low. It not the rate—was not the rate in

force on products prior to the reduction yielding the carriers a profit, or an adequate compensation in excess of the cost of service, in your opinion.

A. I think even if the rates on dressed beef and packing house products were advanced over the present rate of 18½ cents to the old rate of 23½ cents, the rate would still be too low.

Q. You think then, the former rate on products was unreasonably low?

A. Yes sir.

Q. It is a fact then isn't it Mr. McCullough, that the rates on products, already in your opinion unreasonably low, *or* unremunerative?

Mr. SEVERANCE: He means that the 23½ cent rate was low and you made it lower.

A. Yes sir, I have already stated that in my opinion the rate of 23½ cents was too low.

Mr. COWAN:

Q. I am talking about the rates on products.

The COURT: Mr. Shaver, state another question.

(Question read by the reporter by request of Mr. Shaver.)

1347 Mr. SHAVER: The witness has testified that the rates in force before the reduction, were, in his opinion, too low.
The COURT: Yes.
Mr. SHAVER: They were then reduced.
The COURT: Yes.
Mr. SHAVER: So I ask that question.
The COURT: And you state "yes" (addressing the witness)?
The WITNESS: Yes, sir.

The COURT:

Q. The railroad companies are doing pretty well, and have been for the past four or five years?

A. Our company have made a very fortunate step I think, in the last six or eight years, by spending a very large amount of money—we have spent a million dollars a year, and though our rates are gradually going down hill, we can do the business cheaper than we did formerly. My observation is that the millions of dollars spent in the last six or eight years has resulted in our getting a good return for the money invested.

The COURT:

Q. Even at a lower rate?
A. Even at a lower rate.
Q. If those rates are too low and have been, where are you making

your money, what sort of products are you making your money upon, and have you been?

1348 A. Our annual report shows that for the year ending July 1, 1905, that we transported a certain number of tons of freight over our road and for the reason that fr m the thousands of shippers who are shipping that freight we have had no complaint, and everybody seems to be satisfied and happy, we think that while a particular rate on a particular commodity may be too low, may be not fair to the railroad, may be even less than cost to the railroad, that there are other commodities moving over our road which——

Q. That is what I am asking, what other commodities are there that pay enough freight?

A. Well, our tariffs on freight in our country are pretty near what they ought to be, except on live stock, packing house products, and in some territory, grain.

Q. That answers the question.

Mr. SHAVER:

Q. You stated Mr. McCullough, that the competition setles the charges; cost of service did not originate the reduction in the live stock producta rate then did it, extra cost of service, if any, in relation to live stock, did not originate the reduction in the product rate, did it, in your opinion?

A. I have already stated that for ten or fifteen years, to my knowledge our company have never charged a rate on live stock, or dressed beef or packing house product at the Missouri River

1349 points, the trouble with the rates at our Missouri River points, or South Omaha and Sioux City—the trouble in reference to adjusting rates out there and getting the rates what we think they ought to be, and which I believe most everybody conceded to be fair to the railroad, is that reduced rates and *disburance* in rates comes up at Kansas City and St. Joe. We have roads running from Kansas City to St. Joe and Omaha and Sioux City. They claim that the packing houses at those points, all of them, should have the same rates. We get a notice that on a certain day there is to be a change in the packing house product rate, or the dressed beef rate from Omaha and Sioux City. We ask "why." They say that is to be the rate from Kansas City and St. Joe on a certain day and it will be a discrimination against the packers at South Omaha and Sioux City unless we give them the same rates as Kansas City and St. Joe.

The COURT: Where does that notice come from?

A. That would usually be at a conference.

Q. With other railroads, you don't mean the Interstate Commerce Commission?

A. Oh, no, from other railroads.

Mr. SHAVER:

Q. Will you please answer this question: Did you reduce the

product rates because of any greater cost of handling the
1350 live stock?

A. We reduced the rates to meet the rates of other roads.

Q. Competition?

A. Competition.

Q. What competition was that in this case?

A. I just tried to explain it.

Q. Competition with the Chicago & Northwestern, is that it—Chicago Great Western?

A. Do you mean this particular rate now?

Q. Yes sir.

A. Yes sir.

The COURT: The Great Western caused that competition?

A. Yes sir. We were advised—the rates on cattle and hogs and dressed beef and packing house products from South Omaha to Chicago were 23 and a half cents per hundred pounds—on a certain day we were advised by the Chicago Great Western Railroad that they proposed to put in force a rate of 20 cents on dressed beef and packing house products.

Mr. SHAVER:

Q. Competition then, alone, originated the reduction in the rate on the products?

A. That is right.

Q. And that competition was the competition of the Chicago Great Western?

A. The Chicago Great Western.

1351 Further cross examination by Mr. COWAN:

Q. Mr. McCullough, were you with your company at the time that that contract was made, or about that time, say on August 4, 1902?

A. Yes sir, I have been with them thirty-four years.

Q. Did you ever see the letter of Mr. Stickney relating the circumstances and conditions which brought about the establishment of his contract?

A. I don't think I ever did, no sir.

Q. Speaking of the facts that led up to that, I want to read a section from his letter and ask you whether——

Mr. SEVERANCE: I object your Honor, unless the letter is first offered in evidence and we are given an opportunity to make such objections as we may desire to make to it.

The COURT: Let him read the letter.

Mr. COWAN: I just wanted to ask——

Mr. SEVERANCE: I object to the letter.

Mr. COWAN: I will put it in another form. I will ask if these facts I am about to state are true.

Mr. SEVERANCE: That doesn't make it any better in view of what has come before it.

The COURT: Let him put his question and you can object to it.

Mr. SEVERANCE: Very well.

1352 Mr COWAN:

Q. Is it not true that the railway companiees felt that the average rate had been too low, and the packers expressed a willingness to pay a rate 15 per cent. higher provided it could be made uniform and stable, is that true at the time, as leading up to the publishing of these rates in question?

A. I do not recollect any request or any application from any packer at South Omaha for a reduction of the 23½ cent rate.

Q. Did you have a conference together, the various railway and traffic men, previous to the time of publishing this reduced rate on packing house products and dressed meat?

A. I remember attending a conference with the Legal Departments of those roads, I do not know——

Q. Did you attend any meeting of the Traffic Officials of other railroads at the office of the Western Trunk Line Committee?

A. I could not say.

Q. Don't you recollect such an important matter as that, whether you did or not?

A. No. The probability is that if such a conference was held, our company would be represented, but I don't think I was there.

Q. Isn't it true that the actual amount of money received from packers previous to that time, I mean by that the net — on
1353 packing house products and dressed meat from the Missouri River was less than the published rates that you then put in effect, or which are in question now?

A. I could not say.

Q. How is that?

A. I could not say.

Q. Why couldn't you say, don't you know?

A. I don't recollect.

The COURT: He wants to know, I suppose whether you paid rebates at that time before this Great Western contract and before this change?

Mr. LYNDE: I wish to object to it, if that is the question.

The COURT: That is the question, isn't it.

Mr. COWAN: It is equivalent to the same thing.

Mr. LYNDE: I object to it then.

Mr. COWAN: I want to know if it is not a fact that when you published and have since maintained, if you have maintained, the present schedule of rates on packing house products and dressed meats, you in effect established an advance over what you were getting from the packers theretofore for the haul.

Mr. LYNDE: I wish to object to that question.

The COURT: The objection is overruled. Of course, the Court has

a right to know whether it advanced it in fact. The schedule rate does not amount to anything if it is not charged, I think
1354 it is important to the Court to know whether they advanced the rate or cut it down.

Mr. LYNDE: Is that the question, whether the rate was advanced or cut down?

The COURT: The published rates cut no figure if they do not receive pay according to their schedule. Now repeat the question and let him answer.

(Question read by the reporter, the question beginning, "I want to know if it is not a fact" etc.)

A. Previous to the date of the Great Western contract—previous to the date their reduced tariff was issued from South Omaha, there was more or less misunderstanding and demoralization in the rates on dressed beef and packing house product from South Omaha and over our road, without discrimination as between persons or localities, we did move some dressed beef and packing house product destined for export, and sent to foreign countries at rates different from the rates shown in our printed tariff. What those rates were, I, of course, cannot say.

The COURT: I think that answers it.

Mr. COWAN:

Q. Is it not true that the railway companies met in their Traffic Association to determine upon the rates which they would publish in their tariffs and thereafter collect?

Mr. LYNDE: That is objected to as not redirect examina-
1355 tion.

The COURT: How is that material, Mr. Cowan?

Mr. COWAN: It is material to show that instead of the rate being, if your Honor please, forced upon all the railroads by the Great Western contract, that it was an agreed rate that they put in as settling a previously disturbed condition of rates when they had all been hauling for less than the amount of the Great Western contract.

The COURT: Well, what difference would that make? The question here is: Is this a discrimination again- traffic or localities? The objection is sustained.

Mr. COWAN:

Q. With respect to the live stock rates in the 23½ cent territory, and from the Missouri River to Chicago, were the carriers transporting that previously at less than the published rate?

A. When for export, I think, yes.

Q. Well, to Chicago?

A. Yes.

Q. When it was simply shipped to Chicago?

A. I think not.

Q. Who was exporting?
A. Well, that is a general statement of mine, of course, it is so far back that I could not exactly recollect.
Q. The packers principally exported?
1356 A. My recollection is that during this demoralization in rates on dressed beef and packing house products, especially for export, that there was some misunderstanding about rates on cattle, and there were some cattle moved, I think, at rates different from the printed tariffs. When that was done, or to what extent, of course, I cannot tell.
Q. That was only from the Missouri River?
A. Only from the Missouri River.
Q. That never applied from intermediate territory?
A. I don't think it did, no sir.

Examination by Mr. LYNDE:

Q. That was all prior to the issuance of the injunction that has been referred to?
A. Yes sir, we are all talking of the time previous to that.
Q. Now, this Great Western contract is still in force, you understand?
A. I so understand it.
Q. The competition you refer to still exists, doesn't it?
A. The same thing.
Q. Can you advance the present rates on products and dressed beef from Missouri River points and participate in that business?
A. If we should advance our rates, and the Great Western
1357 should continue their tariff, and it remained unchanged, nothing would be accomplished except that we would drop the business and turn it over to the Great Western road.
Q. That is, you would not carry any of the business?
A. No.

WILLIAM A. GORMAN, called as a witness in behalf of the defendant-, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your full name?
A. William A. Gorman.
Q. With which one of these companies defendant are you connected, and in what capacity?
A. With the Chicago, Milwaukee & St. Paul Railroad as Chief Tariff Clerk.
Q. Have you caused to be correctly compiled a statement showing comparisons between the rates on cattle and hogs from points on the Chicago, Milwaukee & St. Paul Railway, intermediate between Chicago and St. Paul, and between Omaha and Chicago, to Chicago,

and rates on cattle and hogs charged by other railways for similar distances, from local stations into South Omaha, Kansas City, Sioux City and South St. Paul?

1358 A. I have.

Q. Please file that statement as "Exhibit No. 1" to your testimony.

(The statement identified by the witness was marked "Gorman's Exhibit No. 1" and filed with the Court as a part of his testimony.)

Exhibit, no. 1 W. A. Gorman 1358a vol 12. p. 1358

RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.R'Y., BETWEEN ST.PAUL, MINN., AND CHICAGO, ILL., TO CHICAGO, ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to Chicago.	Name of Station.		Cattle	Hogs.	Comparative rates in cents per 100 lbs. From			Distance	To		Cattle	Hogs.
23.8	Deerfield,	Ill.	5.5	6.5	So.Bend,	(3)	Neb.	27.5	So.Omaha,	Neb.	7	9.5
					De Soto,	(1)	Kan.	24	Kansas City,	Mo.	6	8
					Elk Point,		S.D.	20.9	Sioux City,	Iowa.	7.11	7.33
					Castle Rock,		Minn.	26.1	So.St.Paul,	Minn.	7.5	7.5
49.6	Fox Lake,	Ill.	6	8	Ames,	(5)	Neb.	49	So.Omaha,	Neb.	9	12
					Lecompton,	(1)	Kan.	51	Kansas City,	Mo.	8	10.5
					Gayville,		S.D.	49.8	Sioux City,	Iowa.	11	13
					Plato,		Minn.	51.9	So.St.Paul,	Minn.	9.5	9.5
73.6	Walworth,	Wis.	8.3	11	Schuyler,	(5)	Neb.	71	So.Omaha,	Neb.	11	14.5
					Pauline,	(1)	Kan.	74	Kansas City,	Mo.	8.5	11
					Lesterville,		S.D.	77.6	Sioux City,	Iowa.	14	16
					Stewart,		Minn.	74.6	So.St.Paul,	Minn.	12.5	12.5
99	Janesville,	Wis.	10	12.5	Duncan,	(5)	Neb.	95	So.Omaha,	Neb.	13	17
					Peterton,	(1)	Kan.	98	Kansas City,	Mo.	10.5	13.5
					Avon,		S.D.	99.9	Sioux City,	Iowa.	16.5	18.5
					Olivia,		Minn.	99.6	So.St.Paul,	Minn.	14	14
125.2	Stoughton,	Wis.	11	13.5	Thummel,	(5)	Neb.	122	So.Omaha,	Neb.	14.5	18.5
					Emporia,	(1)	Kan.	128	Kansas City,	Mo.	11	14
					Ethan,		S.D.	126	Sioux City,	Iowa.	17	20.25
					Minnesota Falls,		Minn.	124.9	So.St.Paul,	Minn.	15	15
151.9	Windsor,	Wis.	12.5	16.5	Grand Island,	(5)	Neb.	149	So.Omaha,	Neb.	14.5	18.5
					Strong City,	(1)	Kan.	148	Kansas City,	Mo.	12	15.5
					Platte,		S.D.	149.8	Sioux City,	Iowa.	19	21.6
					Watson,		Minn.	146.6	So.St.Paul,	Minn.	16	16
177.3	Portage,	Wis.	12.5	17.5	Shelton,	(5)	Neb.	173	So.Omaha,	Neb.	15	20
					Florence,	(1)	Kan.	173	Kansas City,	Mo.	14	18
					White Lake,		S.D.	172.7	Sioux City,	Iowa.	20.5	23
					Correll,		Minn.	170.6	So.St.Paul,	Minn.	16.5	17

RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.R'Y., BETWEEN ST.PAUL, MINN., AND CHICAGO, ILL., TO CHICAGO, ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to Chicago.	Name of station.	Cattle	Hogs.	Comparative rates in cents per 100 lbs. From		Distance	To	Cattle	Hogs
202.8	Lyndon, Wis.	15	20	Odessa, Newton, Chamberlain, Milbank,	(5) (1) Neb. Kan. S.D. "	201 201 204.6 197.6	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	15.5 14.5 22 17	20.5 19 25 17.5
224.2	Orange, Wis.	16	22	Lexington, Kent, Redfield, Wheaton,	(5) (1) Neb. Kan. S.D. Minn.	227 227 224.8 224.2	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	16.5 16.5 23 17	22 21.5 26 21.5
249.6	Lafayette, Wis.	17	22	Bassett, Bunker Hill, Duxbury, Bristol,	(2) (5) Neb. Kan. S.D. "	246.5 253 250.2 255.3	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	18.5 16.5 25 21.5	24.5 21.5 27 23
277.6	Medary, Wis.	18	22	Maxwell, Cabool, Bath, Groton,	(5) (4) Neb. Mo. S.D. "	273 279 273.9 275	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	19.5 18 25 23	25.5 22.5 28 26.5
300.3	Lamoille, Minn.	19	22	Hershey, Burnham, Winship, Newark,	(5) (4) Neb. Mo. S.D. "	300 298 297.7 303.7	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	22 20 27 22	29 25 30.7 25

(1) A.T.& S.F.R'Y.
(2) C.& N.W.R'Y.
(3) C.R.I.& P.R'Y.
(4) ST.L.& S.F.R.R.
(5) U.P.R.R.

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RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.R'Y., BETWEEN MISSOURI RIVER AND CHICAGO. ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to - Chicago.	Name of station.		Cattle	Hogs.	Comparative rates in cents per 100 lbs. From		Distance	To	Cattle	Hogs.
297	Eidsell,	Iowa.	22	21	Pawnee Rock,	(1) Kan.	299	Kansas City, Mo.	17.5	20.5
					Hershey,	(4) Neb.	300	So.Omaha, Neb.	22	20
					Winship,	S.D.	293	Sioux City, Iowa.	27	20.5
					Newark,	"	304	So.St.Paul, Minn.	22	25
330	Maxwell,	Iowa.	22	22.5	Wakeeney,	(4) Kan.	322	Kansas City, Mo.	18	22.5
					Benklemen	(2) Neb.	329	So.Omaha, Neb.	23	30
					Bowdle,	S.D.	323	Sioux City, Iowa.	26	30
					Harlem,	N.D.	321	So.St.Paul, Minn.	22	25
347	Nowall,	Iowa.	22	23.5	Spearville,	(1) Kan.	353	Kansas City, Mo.	24	28
					Big Spring,	(4) Neb.	357	So.Omaha, Neb.	24	31
					Zeeland,	N.D.	353	Sioux City, Iowa.	27	28
					Bowdle,	S.D.	351	So.St.Paul, Minn.	24	30
370	Jamaica,	Iowa.	23.5	23.5	Sears,	(1) Kan.	374	Kansas City, Mo.	24	28.5
					Julesburg,	(4) Colo.	368	So.Omaha, Neb.	25	30.
					Strasburg,	N.D.	373	Sioux City, Iowa.	27.5	30.
					Selby,	S.D.	371	So.St.Paul, Minn.	26.	32.
403	Churdan	Iowa.	23.5	23.5	Ingalls,	(1) Kan.	394	Kansas City, Mo.	24.5	30
					Sidney,	(4) Neb.	410	So.Omaha, Neb.	28	30
					Chadron,	(3) Neb.	402	Sioux City, Iowa.	28	30
					Evarts,	S.D.	391	So.St.Paul, Minn.	28	34
427	Manilla,	Iowa.	23.5	23.5	Wallace,	(4) Kan.	420	Kansas City, Mo.	25	30.5
					Potter,	(4) Neb.	429	So.Omaha, Neb.	28	30
					Whitney,	(3) "	414	Sioux City, Iowa.	28	27
					Oberon.	(5) N.D.	421	So.St.Paul, Minn.	24.5	31
453	Portsmouth,	Iowa.	23.5	23.5	Hartland,	(1) Kan.	448	Kansas City, Mo.	25.5	31
					Kimball,	(4) Neb.	447	So.Omaha, Neb.	29	33
					Harrison,	(3) "	456	Sioux City, Iowa.	28	29
					Leeds,	(5) N.D.	450	So.St.Paul, Minn.	24.5	32.5

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RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.T'Y., BETWEEN MISSOURI RIVER AND CHICAGO, ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to Chicago,	Name of Station.	Cattle	Hogs.	Comparative rates in cents per 100 lbs. From		Distance	To	Cattle	Hogs.
473	Underwood, Iowa.	23.5	23.5	Medway,	(1) Kan.	477	Kansas City, Mo.	25.5	31
				Dickson,	(2) Colo.	479	So.Omaha, Neb.	31	41.5
				Van Tassel,	(3) Wyo.	463	Sioux City, Iowa.	29	41
				New Salem,	(5) N.D.	477	So.St.Paul, Minn.	26.5	
503	Luton, Iowa.	24	23.5	Grenada,	(1) Colo.	501	Kansas City, Mo.	26.5	34.5
				Hardin,	(4) Colo.	503	So.Omaha, Neb.	33	42.5
				Koeline,	(3) Wyo.	505	Sioux City, Iowa.	33	45
				Glenullen,	(5) N.D.	506	So.St.Paul, Minn.	26.5	

(1) A.T.& S.F.R'Y.
(2) C.B.& Q.R'Y.
(3) C.& N.W.R'Y.
(4) C.P.R.R.
(5) Nor.Pac.R'Y.

Q. State generally what the statement "Exhibit 1" shows Mr. Gorman.

A. The statement shows the local rates on the main line of the C. M. & St. P. Railway between St. Paul and Chicago, and on the main line of the C. M. & St. P. Railway between Omaha and Chicago on cattle and hogs, to Chicago, for distances from 25 miles to 500 miles at intervals of 25 miles.

It also shows the rates for the same distances into South Omaha, Kansas City, Sioux City and South St. Paul.

There are 166 comparisons, and of those 166 comparisons, 153 of the rates into South Omaha, Kansas City, Sioux City and South St. Paul, are higher than the rates for the same distances into Chicago on cattle and hogs; 13 of the rates into South Omaha, Kansas City, Sioux City and South St. Paul are lower than into Chicago.

1359 Cross-examination by Mr. COWAN:

Q. Mr. Gorman, is it not a fact that the rates on your line of road on packing house products and dressed meat are higher than for shipments of live stock between the same points, except in in-shipments from the Missouri River and interior Iowa points, where packing is done, eastward?

A. Well, I am not prepared to answer that question.

H. R. MCCULLOUGH, recalled as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. LYNDE:

Q. What proportion Mr. McCullough of the entire traffic, freight traffic on the Northwestern road, is this live stock business?

A. I had those figures, but I have forgotten, it is already in evidence.

Q. Mr. Gardner stated about 3 per cent.

A. Yes sir, that is my recollection.

Mr. COWAN: The annual report will show.

Mr. LYNDE: I don't think it is divided between live stock and other traffic.

Mr. SEVERANCE: It is already in evidence.

The WITNESS: It is already in Mr. Gardner's papers.

1360 Mr. LYNDE: I think that is all.

Mr. SEVERANCE: I would like to ask one question.

Examination by Mr. SEVERANCE:

Q. Mr. McCullough, haven't you with you a statement showing the comparative rates into South Omaha and Sioux City on the one hand, and Chicago on the other from points in this 23½ cent zone in Western Iowa?

A. Yes sir, I have filed one here that gives the rates for three or four stations.

Q. Haven't you a detailed statement there?
A. Yes sir, I have.
Q. I would like to have you produce that and put it into your testimony.

(The witness here produced a document, which was marked "McCullough's Exhibit X" and filed with the Court as a part of his testimony.)

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

McCullough Exhibit "X"

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1360d

NUMBER OF CARS OF LIVE STOCK FROM THE FOLLOWING STATIONS IN IOWA.
FROM JULY 1st, 1904, TO JULY 1st. 1905.

FROM	To Omaha			To Sioux City			To Chicago.		
	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
Mo Valley	18	48	66	1		1	21	15	36
Logan	28	129	157				24	50	74
Woodbine	44	48	92				103	27	130
Dunlap	1	21	52				119	36	155
Dow City	7	30	37				57	17	74
Arion	3	6	9				10	6	16
Dennison	19	61	80				64	54	118
Vale	2	38	40				236	74	310
West Side	8	46	54	2		2	315	58	373
Arcadia	10	49	59				45	43	88
Maple River	16	5	21				38	13	51
Carroll	20	9	29				81	13	94
Glidden	16	47	63				80	55	135
Ralston	21	18	39				18	13	31
Scranton	12	11	23				51	32	83
Jefferson	12	4	16				59	77	136
Grand Junction	3		3				93	86	179
Beaver	1		1				19	5	24
Ogden	22	4	26				58	34	92
Mongonia	1	3	4				5	1	6
Boone	32		32				27	5	32
Halbur	6	13	19				25	14	39
Manning	7	10	17				44	13	57
Gray	16	47	63				54	11	65
	325	677	1002	3		3	1646	752	2398

	To Omaha			To Sioux City			To Chicago		
FROM	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
Ross	13	33	46	1		1	61	22	83
Audubon	12	28	37				70	75	145
Botna		19	19				69	6	75
Irwin	2	2	4	1		1	57	59	116
Kirkam		16	16				32	28	60
Harlan	8	17	25				59	10	69
Dayton							80	57	137
Hardourt							27	38	65
Gowrie							47	41	88
Farnhamville							49	56	105
Lohrville							29	54	83
Lake City		12	12				59	75	134
Auburn	14	26	40				31	50	81
Carnarvon		2	2				7	13	20
Wall Lake	1	8	9				74	73	147
Odebolt				2	23	25	136	214	350
Arthur					22	22	133	89	222
Id Grove				6	2	8	315	269	584
Battle Creek	5		5	5	84	89	395	156	551
Danbury		14	14	8	37	45	150	69	219
Mapleton	2	7	9	9	41	50	51	10	61
Castana				4	9	13	13	7	20
Turin		1	1	28	29	57	30	15	45
Onawa	17	6	23	13	48	61	1	1	2
	74	188	262	75	295	370	1975	1487	3452

FROM	To Omaha			To Sioux City			To Chicago		
	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
Breda	3	30	35				25	93	118
Lake View		15	15		1	1	53	64	117
Sac City	3		3	1		1	61	43	104
Early	2		2	5		33	114	93	207
Schaller	2	1	3	3		53	93	103	196
Galva						19	169	143	312
Holstein				10		56	201	256	457
Cushing				7		83	118	75	193
Correctionville				3		50	19	26	45
Pierson				3		68	140	166	306
Kingsley				15		156	215	116	331
Moville				86		224	134	7	141
Lawton				56		128	20		20
Bronson	1		1	81		156	92	2	94
Sargents Bluff				22		41	21	1	22
Deloit		19	19	1		1	7	18	25
Boyer	4	9	13				32	19	51
Herring	1	22	23				49	23	72
Kiron		4	4				104	146	252
Schleswig	1	18	19			3	199	213	412
Ricketts	17	52	69				69	77	146
Berne	3	12	15	1	1	2	24	18	42
Ute		11	11				2	10	12
Soldier	8	12	20				61	62	123
	45	205	250	294	781	1075	2024	1774	3798

1360g

	To Omaha			To Sioux City			To Chicago		
	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
FROM									
Moorehead	10	55	65		2	2	110	52	162
Fiegah	22	41	63	10		10	25	13	38
Orson	13	34	47				8	11	19
Mondamin	11	33	44				6	1	7
Californina Jct	2	11	13						
Modale	17	45	62				13	1	14
River Sioux	14	12	26				6		6
Blencoe	19	26	45	2	6	8		12	12
Whiting.	2		2	24	74	98	56	2	58
Sloan	3	6	9	48	29	77	79	43	122
Salix				29	38	67	9	1o	19
Sioux City	3		3				160	11	171
	116	263	329	113	149	262	472	156	628
Grand Total	560	1333	1893	485	1225	171o	6117	4169	1o286

Q. State generally what that statement shows, and then we will file the statement?

A. This statement shows the distance, the rate on cattle and hogs from all stations on the Chicago & Northwestern Railroad east of the Missouri River for 150 miles, to South Omaha, to Sioux City, and to Chicago—that shows the mileage and the rates.

Q. Shows the mileage to these various termini from those stations?

A. Yes sir. It also shows the movement of cattle and hogs
1361 from each one of these stations to South Omaha and to Sioux City, and to Chicago from July 1, 1904, to July 1, 1905. It shows in detail the number of cars shipped from each station to Sioux City to South Omaha and to Chicago. The recapitulation from these stations is as follows:

To Omaha, 560 cars of cattle, 1333 cars of hogs, total, 1893 cars. That is South Omaha.

To Sioux City, 485 cars of cattle, 1225 cars of hogs, a total of 1710 cars.

To Chicago: Cattle, 6117 cars, hogs, 4169 cars, total, 10,286 cars.

So that the total movement for 12 months figures, 1893 cars at South Omaha, 1710 cars to Sioux City and 10,286 cars to Chicago.

The stations mentioned in this statement are the stations on our road at which it is proposed to reduce the rates from 3½ cents on cattle to 5 cents on cattle.

Mr. LYNDE:

Q. That is in the 23½ cent zone?

A. In the 23½ cent zone, and also the 5 cent zone to Sioux City, to reduce live stock rates to Sioux City, or reduce the dressed beef and packing house products, there would be a reduction in
1362 that of 5 cents.

Mr. SEVERANCE:

Q. This statement shows the mileage into these places from each station separate and the rate?

A. Yes sir, and the movement for one year.

Q. I would like to have that statement identified, your Honor and filed as part of Mr. McCullough's testimony.

(This was done as heretofore shown.)

Mr. LYNDE:

Q. This statement you have filed here is correct?

A. Yes sir, it is made from our books.

Q. Under the rates as now adjusted into South Omaha, Sioux City and into Chicago, out of this 23½ cent zone, three times as many cattle went on those rates to Chicago as did to Omaha?

A. Yes sir.

Mr. COWAN:

Q. Why was that?

A. It is a very difficult thing to say. Why, you go to one station

on our road and find one man shipping to Sioux City, another to South Omaha, and another to Chicago.

Mr. LYNDE: From the same station?

A. From the same station. I do not know any reason that anybody can give for it, any more than when a man goes away from home, some man will go to Sioux City, another to Omaha and another to Chicago.

1363 Mr. RANSOM:

Q. Mr. McCullough, in your opinion, these rates are relatively properly adjusted, are they not?

A. The rates on live stock in that territory, both to Sioux City, South Omaha and Chicago, are low in themselves; the relative adjustment as between Chicago and South Omaha and Sioux City, I think is fair, and the best that we have been able to do with them.

Q. And in your estimation, they are properly adjusted?

A. As they are now.

The COURT:

Q. Why didn't you do that then before this contract was made with the Great Western?

A. Why did we do it?

Q. Why didn't you, if you think it is fair, why didn't you do it before the contract was made?

A. They are on the same basis now as they were before the contract was made.

Mr. RANSOM: We are talking about the live stock rate, the question was.

The COURT: No, he is talking about the relative rates on live stock and packing house products.

Mr. RANSOM: No.

The WITNESS: The contract of the Chicago Great Western Railroad has not made any change in our rates on live stock from any of these stations to Sioux City, to South Omaha, or to Chi-
1364 cago, they are just the same as they were before this contract was made.

Mr. DAWES: I think your Honor misapprehended the question, it related entirely to the relation of the rates between localities.

The COURT: They have been the same all of the time between the three localities relatively?

A. Yes sir.

Mr. COWAN:

Q. Those rates to the River are the rates of the Iowa Commission, are they not?

A. Local in the State.

Q. I am just asking you, are they the rates of the Iowa Commission to Sioux City?

A. Yes sir.

Q. And to Council Bluffs plus the bridge charge?

A. To Council Bluffs, Iowa, the rates are the Iowa rates, to South Omaha, it would be the Iowa rates plus the bridge rate.

Q. How much?

A. I think that is $4 a car.

Q. Is that a fair rate to charge?

A. I could not say.

Mr. RANSOM:

Q. Just one moment. Do you know anything about that bridge toll personally Mr. McCullough?

A. The bridge toll on live stock from points on our road in
1365 Iowa going to South Omaha is fixed by the Union Pacific Railroad, we know nothing about that except their printed tariff.

Q. Do you cross the Union Pacific bridge?

A. We take live stock to — these are tariffs on live stock—our tariffs on live stock to South Omaha reads, both by way of Council Bluffs and the Union Pacific——

Q. Do you use the Omaha bridge?

A. Our tariffs on live stock from points in Iowa to South Omaha read by way of the Union Pacific transfer and Union Pacific railroad, Union Pacific Transfer to South Omaha; they also read to South Omaha by way of Missouri Valley, California Junction, over the Blair bridge, and over our own railroad into South Omaha, the shipper can send his live stock either way.

Q. And it costs him the same?

A. Yes sir. How it is moving, I don't know.

Q. You do not know of any $4 arbitrary bridge toll there across the Union Pacific bridge, do you?

A. I suppose that is their bridge toll.

Q. Now, as a matter of fact, Mr. McCullough, don't you know that there is no railroad crossing the Union Pacific bridge that pays the arbitrary bridge toll *on* $4 a car, don't you know that is true?

A. The only information I have is in having this statement made up in my office. They tell me that the bridge toll charged by
1366 the Union Pacific Railroad on live stock to South Omaha over their railroad is $4 per car.

Q. Well is it $4 per car on everything else?

A. That I do not know. Their bridge toll you know is a regular published circular the same as a tariff.

Q. But they do not collect any such rate of toll from the Northwestern Road?

A. Well, they must I guess.

Q. You know that all those roads cross that bridge under leases, don't you? And it applies to all the freight and passenger trains that have use of the tracks?

A. I don't think that would apply on a shipment of hogs local from Iowa, destined to South Omaha. It might. I don't know.

Q. You don't know?

A. No, I don't know.

Mr. LYNDE:

Q. You can find that out, can you?
A. Yes sir.
Mr. LYNDE: Please do so.

Mr. COWAN:

Q. Does it apply on packing house products?
A. I could not say.

1367 Mr. BAXTER: May it please your Honor, we close our oral testimony at this point with the exception that at least one of our witnesses, in reading over his testimony, as taken by the stenographer, has detected some clerical errors as to figures, and I wish to reserve the right to call witnesses back to make any corrections in such matters.

The COURT: Certainly.

Mr. SEVERANCE: That permission will be granted to all defendants.

The COURT: Certainly.

Documentary Evidence Introduced.

Mr. BAXTER: I wish to put in evidence on behalf of the defendants, extracts from appendix "G" to the 16th Annual report of the Interstate Commerce Commission, entitled "A Forty Year Review of Changes in freight tariffs, prepared by the Auditor of the Commission, namely, page 102, table LXVII, freight rates charged for transportation of classified traffic and important commodities from Atchison, Kansas, St. Joseph, Missouri, Kansas City, Missouri and Leavenworth, Kansas, and Chicago, Illinois, from January 2, 1877 to April 1, 1902."

The COURT: Where is that found?

TABLE LXVII.—Freight Rates Charged for the Transportation of Classified Traffic and Important Commodities from Atchison, Kans., St. Joseph, Mo., Kansas City, Mo., and Leavenworth, Kans., to Chicago, Ill., from January 2, 1877, to April 1, 1902.

Date.	Classes and commodities.													Rates per car.		
	Rates in cents per 100 pounds.															
	1	2	3	4	5	6	7	8	9	10	Wheat.	Rye and barley.	Corn and oats.	Cattle.	Hogs.	Sheep.
1877—Jan. 2	75	60	45	30	....	....	....	....	....	....	30	22½	22½	$67.50	$67.50	$50.00
May 1	75	60	45	30	....	..	..	....	..	..	30	25	25	70.00	70.00	50.00
July 12	75	60	45	30	....	....	....	....	....	..	28	21	21	67.50	67.50	50.00
Aug. 20	75	60	45	30	....	....	....	....	....	..	30	25	25	67.50	67.50	50.00
Nov. 1	75	60	45	30	....	....	..	..	....	....	30	25	25	67.50	67.50	45.00
1878—Jan. 12	75	60	45	25	....	....	..	....	..	....	30	20	20	67.50	67.50	45.00
Jan. 14	75	60	45	25	....	....	..	....	....	....	25	20	20	67.50	67.50	45.00
July 25	75	60	45	25	..	....	..	....	....	....	25	20	20	67.50	57.50	45.00
Nov. 18	75	60	45	31	....	....		..	....	....	25	20	20	67.50	57.50	45.00
Nov. 27	75	60	45	31	....	....	....	..	..	....	25	20	20	67.50	57.50	45.00
1879—Feb. 1	75	60	45	31	....	....	....	....	....	....	25	20	20	67.50	57.50	45.00
Feb. 10	75	60	45	26	..	....	....	....	....	....	25	20	20	67.50	47.50	45.00
Mar. 1	75	60	45	25	..		..	....	....	..	28	23	23	67.50	47.50	45.00
Nov. 1	75	60	45	26½	....	....	..	....	..	....	26½	21½	21½	67.50	47.50	45.00
1880—Feb. 2	75	60	45	27	....		..	..	....	....	25½	20½	20½	67.50	47.50	45.00
Mar. 1	75	60	45	27	..	....	..	....	....	..	25½	20½	20½	67.50	47.50	45.00
Apr. 5 (new classification)	75	60	45	27	27	27	27	20½	25½	25½	25	20	20	67.50	47.50	45.00
Apr. 14	75	60	45	27	27	27	25½	20	25½	25½	18	14	14	67.50	47.50	45.00
Apr. 21	75	60	45	27	27	27	25½	20	25½	25½	15	12	12	67.50	47.50	45.00
Apr. 24	75	60	45	27	27	27	25½	20	25½	25½	27½	22½	22½	67.50	47.50	45.00
Sept. 29	75	60	45	27	27	27	25½	20	25½	25½						

Page 102, Appendix "G."

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1368 Mr. BAXTER: It is found in the annual report of the Interstate Commerce Commission, and is made evidence I understand by the Act of Congress.

The COURT: Yes, but where do you find it?

Mr. BAXTER: I find it in this pamphlet which is an appendix to the report — the correct description is "Appendix 'G' to the Sixteenth Annual Report of the Interstate Commerce Commission." The appendix is entitled "A forty year review of changes in freight tariffs, prepared by the Auditor of the Commission."

The COURT: Well, let it be admitted.

Mr. BAXTER: It is a hundred odd pages. I don't want to put in the record but certain pages.

The COURT: Indicate what you want to go in.

Mr. BAXTER: Page 102, table LXVII. Freight rates charged for the transportation of classified traffic and important commodities from Atchison, Kansas, St. Joseph, Missouri, Kansas City, Missouri, Leavenworth, Kansas, to Chicago, Illinois from January 2, 1877 to April 1, 1902.

Page 103, freight rates charged for the transportation of classified traffic and important commodities from Atchison, Kansas, St. Joseph, Missouri, Kansas City, Missouri and Leavenworth, Kansas to Chicago, Illinois, from January 2, 1877, to April 1, 1902, being table LXVII con-

TABLE LXVII.—Freight Rates Charged for the Transportation of Classified Traffic and Important Commodities from Atchison, Kans., St Joseph, Mo., Kansas City, Mo., and Leavenworth, Kans., to Chicago Ill., from January 2, 1877, to April 1, 1902—*Continued.*

Date.	Classes and commodities.															
	Rates in cents per 100 pounds.													Rates per car.		
	1	2	3	4	5	6	7	8	9	10	Wheat.	Rye and barley.	Corn and oats.	Cattle.	Hogs.	Sheep.
1880—Oct. 27	75	60	45	27	27	27	25½	20	25½	25½	25	20	20	67.50	47.50	45 00
Nov. 1	75	60	45	27	27	27	25½	20	25	25½	27½	22½	22½	67.50	47.50	45.00
Nov. 6	75	60	45	27	27	27	26½	20	25	25½	25	20	20	67.50	47.50	45.00
Nov. 22	75	60	45	27	27	27	26½	20	26½	25½	25½	20½	20½	67.50	47.50	45.00
1881—Jan. 1	75	60	45	27	27	27	26½	20½	25½	25½	25½	20½	20½	67.50	47.50	45.00
Mar. 8	75	60	45	27	27	27	26½	20½	27	25½	25½	20½	20½	67.50	47.50	45.00
Apr. 1	75	60	45	27	27	27	25½	20	26½	25	25	20	20	67.50	47.50	45 00
July 23	75	60	45	27	27	27	25	20	26	25	25	20	20	67.50	47.50	45.00
Nov. 7	75	60	45	27	27	27	25	20	26	25	25	20	20	60.00	47.50	45.00
1882—Jan. 2	75	60	45	27	27	27	25	20	26	25	25	20	20	60.00	45.00	45.00
Feb. 1	75	60	45	27	27	27	25	20	25	25	20	18	18	60.00	45.00	45.00
Mar. 13	75	60	45	27	27	27	25	19	25½	25	21	16½	16½	60.00	47.50	45.00
Apr. 1	75	60	45	27	27	27	25	20	25½	25	25	20	20	65.00	50.00	45.00
Aug. 1	75	60	45	27	27	27	25	20	25½	25	27½	22½	22½	65.00	50.00	45.00
Oct. 16	75	60	45	30	27	27	25	20	25½	25	25	20	20	65.00	50.00	45.00
Dec. 1	75	60	45	30	27	27	25½	20	26½	25½	25	20	20	65.00	50.00	45.00
1883—Jan. 1	75	60	45	30	27	27	25½	20	26½	25½	25	20	20	65.00	42.50	45.00

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TABLE LXVII—Freight Rates Charged for the Transportation of Classified Traffic, etc.—*Continued.*

Date.	Classes and commodities.															
	Rates in cents per 100 pounds.													Rates per car.		
	1	2	3	4	5	6	A	B	C	D	Wheat.	Rye and barley.	Corn and oats.	Cattle.	Hogs.	Sheep.
1883—May 5 (new classification)....	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	42.50	45.00
Nov. 12.	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	45.00	45.00
Dec. 17.	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	45.00	45.00
1884—Jan. 15.....	90	75	50	32	28	25½	37½	32	23	23	25	20	20	65.00	42.50	45.00
Mar. 15.....	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	42.50	45.00
June 2.	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	45.00
June 16..	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	40.00
1886—Aug. 23....	90	75	50	35	30	22½	32½	29½	23	23	25	20	20	65.00	42.50	40.00
1887—Jan. 1.	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	40.00
	1	2	3	4	5	A	B	C	D	E						
Apr. 1 (new classification)....	90	75	50	35	30	32½	29½	23	20	16	25	20	20	65.00	55.00	45.00
Aug. 1.....	90	75	50	35	30	32½	29½	23	20	16	22½	20	20	65.00	45.00	45.00
Dec. 20.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	45.00	45.00
1888—Jan. 9.....	75	60	40	30	25	30	25	15	15	15	22½	20	20	60.00	45.00	45.00
Mar. 26.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	45.00	45.00
Oct. 1.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	40.00	40.00
Oct. 25.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,27½	1,25	1,27½
1889—July 16.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,22	1,25	1,22
Dec. 21.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,18	1,25	1,22
1890—Jan. 25.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,12½	1,25	1,22
Aug. 25.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,22	1,25	1,25
Oct. 1.	75	60	40	30	25	30	25	20	17½	16	20	20	17	1,22	1,25	1,25

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1891—Jan. 1	75	60	42	30	25	30	25	20	17½	16	20	20	17	[1].23½	[1].22	[1].25
Jan. 15	75	60	42	30	25	30	25	20	17½	16	23	20	[2]	[1].23½	[1].22	[1].25
1893—June 10	75	60	42	30	25	30	25	20	17½	16	24	20	20	[1].23½	[1].22	[1].25
1894—May 12	75	60	42	30	25	30	25	20	17½	16	24	20	20	[1].15	[1].12	[1].15
June 1	75	60	42	30	25	30	25	20	17½	16	24	20	20	[1].23½	[1].22	[1].25
July 1	80	65	45	32	27	32	27	22	18½	16	24	20	20	[1].23½	[1].22	[1].25
Dec. 1	80	65	45	32	27	32	27	22	18½	16	24	20	20	[1].23½	[1].23½	[1].25
1895—Oct. 22	80	65	45	32	27	32	27	22	18½	16	8	8	8	[1].23½	[1].23½	[1].25
Nov. 3	80	65	45	32	27	32	27	22	18½	16	24	20	20	[1].23½	[1].23½	[1].25
1896—July 13	80	65	45	32	27	32	27	22	18½	16	16	14	14	[1].23½	[1].23½	[1].25
July 15	80	65	45	32	27	32	27	22	18½	16	13	14	14	[1].23½	[1].23½	[1].25
July 21	80	65	45	32	27	32	27	22	18½	16	17	14	14	[1].23½	[1].23½	[1].25
July 26	80	65	45	32	27	32	27	22	18½	16	16	14	14	[1].23½	[1].23½	[1].25
July 28	80	65	45	32	27	32	27	22	18½	16	12	9	9	[1].23½	[1].23½	[1].25
Aug. 1	80	65	45	32	27	32	27	22	18½	16	17	15	15	[1].23½	[1].23½	[1].25
Oct. 15	80	65	45	32	27	32	27	22	18½	16	17	13	13	[1].23½	[1].23½	[1].25
Nov. 2	80	65	45	32	27	32	27	22	18½	16	22	17	17	[1].23½	[1].23½	[1].25
Dec. 22	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
1897—Apr. 12	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].15	[1].25
Apr. 20	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
1898—Apr. 12	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].15	[1].25
May 5	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
May 10	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].15	[1].25
May 18	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].10	[1].25
July 25	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
Sept. 27	80	65	45	32	27	32	27	22	18½	16	14	13	13	[1].23½	[1].23½	[1].25
Nov. 25	80	65	45	32	27	32	27	22	18½	16	14	13	13	[1].23½	[1].15	[1].25
1899—Jan. 2	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
July 1	80	65	45	32	27	32	27	22	18½	16	18	15	15	[1].23½	[1].23½	[1].25
1900—Jan. 1	80	65	45	32	27	32	27	22	18½	16	19	16	16	[1].23½	[1].23½	[1].25
Oct. 20	80	65	45	32	27	32	27	22	18½	16	17	16	16	[1].23½	[1].23½	[1].25
Dec. 10, to Apr. 1, 1902	80	65	45	32	27	32	27	22	18½	16	19	16	16	[1].23½	[1].23½	[1].25

[1] In cents per 100 pounds.

[2] Corn, 19 cents; oats, 20 cents.

NOTE.—For changes in the minimum carload weights governing the class rates shown above (from 1887) in carloads, see text, p. 18, and for those governing commodities, see Table IX.

Page 103, Appendix "G."

1369 tinued.

Page 104, table LXVIII, freight rates charged for transportation of important commodities from Kansas City, Missouri, to Chicago, Illinois, from May 25, 1869 to April 1, 1902.

Page 105, table LXIX, freight rates charged for the transportation of classified traffic and important commodities from Atchison, Kansas to Kansas City, Missouri, St. Joseph, Missouri and Leavenworth, Kansas to St. Joseph, Missouri, via. rail lines from January 2, 1877 to April 1, 1902.

Page 106, table LXX, freight rates charged for the transportation of grain and meat products from Kansas City, Missouri, to St. Louis, Missouri, from January 17, 1879 to April 1, 1902.

Page 18, table IV, "Changes in the minimum car load rates on live stock and dressed meat from April 1, 1887, to April 1, 1902, Western Classification."

The COURT: Are you through on the part of the defense?

Mr. BAXTER: Yes, sir.

The COURT: Call your witnesses.

Mr. SEVERANCE: Your Honor will recollect I reserved the right to put in evidence the annual report of the Chicago—of the St. Paul Union Stock Yards; I forgot to bring it over.

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LXVIII

Table [illegible].—Freight Rates Charged for the Transportation of Important Commodities from Kansas City, Mo., to Chicago, Ill., from May 25, 1869, to April 1, 1902.

Date.	Rates per car.	Rates in cents per 100 pounds.			Date.	Rates in cents per 100 pounds.			
	Live hogs.	Packinghouse products.	Wheat.	Other grain.		Live hogs.	Packinghouse products.	Wheat.	Other grain.
1869—May 25			44	34	1894—July 1	22	22	24	20
1871—July 1			40	35	Dec. 1	23½	23½	24	20
Nov. 1	$94.00		30	30	1895—June 18	23½	15	24	20
1874—Apr. 20	70.00		30	30	Aug. 1	23½	23½	24	20
1879—Jan. 17	57.50	31	25	20	Oct. 22	23½	23½	8	8
Feb. 1	57.50	31	25	20	Nov. 3	23½	23½	24	20
Mar. 1	47.50	25	25	20	1896—July 13	23½	23½	16	14
Oct. 16	47.50	26½	25	20	July 15	23½	23½	13	14
Nov. 10	47.50	26½	28	23	July 21	23½	23½	17	14
1880—Apr. 17	47.50	25½	25	20	July 26	23½	23½	16	14
Nov. 8	47.50	26½	25	20	July 28	23½	23½	12	9
1881—Apr. 1	47.50	25½	25	20	Aug. 1	23½	23½	17	15
July 23	47.50	25	25	20	Oct. 1	23½	15	17	15
1882—Feb. 1	45.00	25	20	18.2	Oct. 11	23½	23½	17	15
Mar. 13	47.50	25	21	16.1	Nov. 2	23½	23½	22	17
Apr. 1	50.00	25	25	20	Dec. 22	23½	23½	19	15
Dec. 1	50.00	27	25	20	1897—Apr. 8	23½	15	19	15
1883—Jan. 1	42.50	27	25	20	Apr. 12	15	13 / 15	19	15
May 15	42.50	25	25	20	Apr. 20	23½	23½	19	15
Dec. 17	45.00	25	25	20	1898—Apr. 12	15	23½	19	15
1884—Jan. 15	42.50	25	25	20	Apr. 19	15	13	19	15
1886—Aug. 23	42.50	22½	25	20	Apr. 20	15	13½	19	15
1887—Jan. 10	42.50	25	25	20	Apr. 21	15	13	19	15
Apr. 1	55.00	25	25	20	Apr. 30	15	10 / 12	19	15
Aug. 1	45.00	25	22½	20	May 5	23½	23½	19	15
Dec. 20	45.00	20	22½	20	May 10	15	15	19	15
1888—Feb. 8	45.00	13	22½	10	May 18	10	15	19	15
Feb. 9	35.00	12½	22½	10	July 25	23½	23½	19	15
Feb. 16	30.00	13	22½	10	Sept. 27	23½	23½	14	13
Feb. 27	30.00	11	22½	10	Nov. 25	15	15	14	13
Mar. 1	30.00	10	22½	10	1899—Jan. 2	23½	23½	19	15
Mar. 26	45.00	20	22½	20	July 1	23½	23½	18	15
June 29	40.00	20	22½	20	1900—Jan. 1	23½	23½	19	16
Oct. 15	37.50	20	22½	20	Oct. 20	23½	23½	17	16
1889—July 19	37.50	18	22½	20	Dec. 10, to Apr. 1, 1902	23½	23½	19	16
Nov. 1	33.00	18	22½	20					
1890—Apr. 22	33.00	12	22½	20					
Aug. 25	37.50	18	22½	20					
Oct. 1	37.50	18	20	[1]20					
1891—Jan. 1	33.00	22	20	[1]20					
Jan. 15	33.00	22	23	[2]20					
1893—June 10	41.80	22	24	20					
1894—May 12	22.80	22	24	20					

[1] Corn and oats, 17 cents.

[2] Corn, 19 cents.

Note.—For changes in the minimum carload weights governing the commodities shown above (from 1887), in carloads, see Table X.

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EXHIBITS NOT SUITABLE FOR MICRO-FILMING

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Table LXX.—Freight Rates Charged for the Transportation of Grain and Meat Products from Kansas City, Mo., to St. Louis, Mo., from January 17, 1879, to April 1, 1902.

Date.	Rates in cents per 100 pounds.		
	Packing-house products.	Wheat.	Other grain.
1879—Jan. 17	25	25	15
Feb. 1	25	25	15
Mar. 1	20	20	15
Sept. 15	20	20	15
Oct. 16	20	20	15
Oct. 22	20	20	15
Nov. 10	20	20	15
1880—Apr. 17	20	20	15
Apr. 21	20	20	15
Apr. 24	20	20	15
Nov. 8	20	20	15
1881—Apr. 1	20	20	15
July 23	20	20	15
Dec. 20	20	20	15
1882—Feb. 1	20	17	15
Feb. 6	20	17	15
Mar. 13	20	17	12½
Apr. 1	20	20	15
Nov. 27	20	20	15
Dec. 1	20	20	15
1883—Jan. 1	20	20	15
May 15	20	20	15
June 11	20	20	15
Dec. 17	20	20	15
1884—Jan. 15	20	20	15
1885—Jan. 1	20	20	15
1886—Jan. 1	20	20	15
Aug. 23	17½	20	15
Aug. 26	17½	20	15
1887—Jan. 1	17½	20	15
Jan. 10	20	20	15
Feb. 1	20	20	15
Feb. 15	20	20	15
Apr. 1	20	20	15
Aug. 1	20	17½	15
Dec. 20	15	17½	15
1888—Jan. 9	15	17½	15
Feb. 8	9	17½	5
Feb. 11	7½	17½	5
Feb. 16	6	17½	5
Feb. 27	6	17½	5
Mar. 1	6	17½	5
1888—Mar. 26	15	17½	15
May 11	15	17½	15
June 29	15	17½	15
Oct. 1	15	17½	15
Oct. 15	15	17½	15
1889—Apr. 1	15	17½	15
May 25	15	17½	15
July 19	13	17½	15
Nov 1	13	17½	15
1890—Mar. 3	13	17½	15
Apr. 23	7	17½	15
Aug. 25	13	17½	15
Oct. 1	13	15	[1]15
1891—Jan. 1	15	15	[1]15
Jan. 15	15	18	[2]15
1893—June 10	15	19	15
1894—Dec. 1	18½	19	15
1895—June 18	10	19	15
Aug. 1	18½	19	15
1896—July 20	18½	12	9
July 26	18½	11	9
July 30	18½	8	6
Aug. 1	18½	12	10
Aug. 6	18½	13	11
Aug. 17	18½	12	10
Sept. 30	8	12	10
Nov. 2	8	14	10
1897—Apr. 1	18½	14	10
Apr. 8	18½	10	10
1898—Jan. 1	18½	14	10
Apr. 8	8, 10	14	10
Apr. 21	18½	14	10
Apr. 23	7	14	10
May 5	18½	14	10
May 10	10	14	10
Sept. 27	10	9	8
1899—Jan. 2	18½	14	10
July 2	18½	13	10
1900—Jan. 1	18½	14	11
Mar. 6	18½	9	8
Apr. 10	18½	14	11
1902—Apr. 1	18½	14	11

[1] Corn and oats, 12 cents.

[2] Corn, 14 cents.

Note.—For changes in the minimum carload weights governing the commodities shown above (from 1887), in carloads, see Table XI.

Documentary Evidence for Defts. 1369d

Table IV.—Changes in the Minimum Carload Weights on Live Stock and Dressed Meats from April 1, 1887, to April 1, 1902.

[Applies to Table 48.]

WESTERN CLASSIFICATION.

Date of changes.	Horses and mules.		Sheep.				Hogs.				Cattle.				Dressed meats.
	When shipments are weighed.	When shipments are not weighed.	When shipments are weighed.		When shipments are not weighed.		When shipments are weighed.		When shipments are not weighed.		When shipments are weighed.		When shipments are not weighed.		
			Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	
1887—Apr. 1.	20,000	20,000	14,000	18,000	16,000	20,000	16,000	22,000	18,000	28,000	20,000	.....	25,000	.....	20,000
1891—Feb. 2.	20,000	20,000	14,000	18,000	16,000	20,000	16,000	22,000	18,000	28,000	(1)	.....	25,000	.....	20,000
1899—July 1.	20,000	20,000	14,000	18,000	16,000	20,000	16,000	22,000	18,000	28,000	20,000	.....	25,000	.....	20,000

[1] 30 feet or under, 18,000 pounds; over 30 feet, 20,000 pounds.

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1370 Mr. RANSOM: I would like to have one witness sworn, only one sworn on behalf of the Union Stock Yards Company of Omaha, Limited.

The COURT: Let him be sworn.

Mr. LYNDE: Your Honor, I shall also want to call the general claim agent, Mr. Richards this afternoon.

The COURT: All right.

Mr. JEFFERY: Before the witness goes on with the examination, I would like to say that at the hearing of the Interstate Commerce Commission, Mr. Bird testified, he is now ill, he is the Vice-President of the Gould lines, the Missouri Pacific, which company I represent. He is now ill in California and is unable to be present and I want to ask Judge Cowan if he will agree to have it appear in the record that his testimony before the Commission may go in on account of the illness of the witness and his inability to appear here personally and testify.

The COURT: What testimony is that, the testimony taken by the Commission?

Mr. JEFFREY: Yes sir, the testimony that he gave in the hearing itself, before the Interstate Commerce Commission.

Mr. COWAN: He can offer the testimony without objections from me. I have already urged that testimony is admissible under
1371 the law, and your Honor so held but as to my making an admission about illness——

The COURT: Let the record show what you want.

Mr. JEFFREY: I want the record to show—I objected myself to the testimony because the other witnesses could be produced. I cannot produce this witness because he is ill.

The COURT: Then do you offer his testimony taken before the Commission?

Mr. JEFFREY: Yes, I offer the testimony given before the Commission.

The COURT: Very well.

Mr. SEVERANCE: We desire to object to that your Honor.

The COURT: You offer his testimony and I will pass on it later.

Mr. SEVERANCE: Your Honor, we do not object on the ground that there is not sufficient showing that Mr. Bird is without the jurisdiction and is sick, I am informed that that is true. So far as I am concerned, I am willing to stipulate to that, but I still object to the reading of the testimony.

The COURT: The objection is overruled. I will admit that testimony. When do you want to read it now?

Mr. JEFFREY: I do not care particularly to take up the
1372 time of the Court by reading this testimony. I understand you have it in your record, Mr. Cowan, to save me the trouble, I haven't got the testimony written up, but to save the trouble, why can't it go in on your record as part of my testimony?

Mr. COWAN: We had the understanding I believe, that as to the mere matter of furnishing a copy instead of the original document, that objection would not be urged, and therefore, while we would read from the record, we would furnish for the files in that case, a

copy of the testimony that we introduce. All you would have to do would simply be to have your stenographer copy the evidence. You can have the original for the purpose of copying.

Mr. SEVERANCE: Pardon me on this question, this is a very important question to us that has just been passed on and we would like to know whether your Honor admits this testimony now without further discussion of the question we raised before on the ground that Mr. Bird cannot be produced as a witness, because we desire to be further heard upon the proposition that the testimony cannot be read by Mr. Cowan where the witnesses can be obtained and brought in here for cross examination.

The COURT: Well, we will see about that when we get to it. This testimony is admitted now and you object to it and have whatever exception you want.

1373 Mr. SEVERANCE: We will reserve our objection as incompetent, irrelevant and immaterial.

The COURT: All right.

Mr. SEVERANCE: I do not object on the ground that they do not produce the records of the Commission showing the testimon- but I object on the ground that it is incompetent to read that testimony here.

The COURT: They prove he is sick.

Mr. SEVERANCE: I admit that, that they have proved that, I admit that he is sick and they are unable to get him.

The COURT: All right, let the testimony go in.

Mr. SEVERANCE: That objection applies perhaps specially in the second case. These two cases are consolidated.

The COURT: All right, have you got it the way you want it now?

Mr. LYNDE: For the purpose of the record I have no objection myself to admitting the fact that Mr. Bird is shown to be sick, and therefore, not in such condition that he can be produced as a witness. I have no objection on that ground but I do contend——

The COURT: You can save your points on the other proposition when we get to it, in rebuttal.

Mr LYNDE: I do not want to waive that objection.

Mr. JEFFREY: I objected on the other ground. I desire to have the record show that I introduced it under the common law rule of evidence and not under the Act of Congress.

1374 WILLIAM J. C. KENYON, called as a witness on behalf of the Intervenors, having been first duly sworn, testified as follows:

Direct examination by Mr. RANSOM:

Q. State your full name?

A. William J. C. Kenyon.

Q. What is your business?

A. General Manager of the Omaha Stock yards and Railway Company.

Q. How long have you been general manager of that?

A. Eight years last past.

Q. Where is that yard located?
A. At South Omaha, Neb.
Q. Where is the South St. Joe stock yards located?
A. At South St. Joseph.
Q. Will you state the markets on the Missouri river of live stock in the order of their importance from Kansas City to St. Joseph?
A. Kansas City, South Omaha, South St. Joseph, Sioux City.
Q. Do you know,—have you prepared a statement showing the origin of live stock shipped into the Missouri River markets, and the Chicago markets and the St. Paul for certain, periods?
A. I have.
Q. What period does that cover?
A. For all the railroads, the years 1901 and 1902; for all the markets except Chicago for 1902, 1904 and seven months of 1905.

1375 Q. Does this statement embrace the total shipments to Chicago during that period?
A. It does.

Q. But does it show for the excepted years, does it fail to show the origin of the stock?
A. We were unable to secure that from the Chicago yards.
Q. Where is that information obtainable?
A. From original sources at the various yards.
Q. And where did you obtain the information from which you made this calculation and statement you have referred to?
A. From the general managers of the various yards.
Q. What territory does this statement that you have spoken of cover?
A. The entire United States.
Q. Please file with your testimony this statement marking it "Kenyon's Exhibit 1."

The document produced by the witness was marked Kenyon's Exhibit 1, and filed with the Court as a part of his testimony.

Q. I wish you would name now where these seven markets are that are covered by your statement?
A. St. Paul, Kansas City, St. Joseph, South Omaha, Sioux City, South St. Paul and Chicago.
Q. Does this statement show in detail the origin of all live stock at each of these markets during the period mentioned?
A. Yes sir, with the exception of Chicago as noted.

1376 Q. Now this statement shows that Chicago received in 1903 over 500,000 head of cattle more than she received the preceding year. I wish you would explain from this statement where this gain of 500,000 head came from?

A. On the last page of this Exhibit it shows that Chicago received in the year 1903 nearly 600,000 head of cattle and calves more than during 1902, whereas Kansas City shows a decrease of 142,000 head, Omaha a small increase, about 10 per cent. increase, St. Joseph 107,000 increase, Sioux City a decrease of 13,000, St. Louis increase only 27,000 and St. Paul decrease 4000 head. Relatively based on past performances Kansas City should have shared in the

prosperity enjoyed by Chicago, she received from Missouri 80,000 head increase and she lost 26,000 head from Kansas, 80,000 loss from Indian Territory; a slight increase of 20,000 head from Oklahoma, a loss of 45,000 head from Texas, and a loss of 50% in receipts from Iowa. The Omaha market during the same period shows an increase of 147,000 head from Nebraska, but large decreases from Colorado, Wyoming, Idaho and Montana, and a slight increase from Iowa, her net increase from all sources being but 10% as great as the total increase of Chicago. Western Missouri and Southwestern Iowa are naturally tributary to St. *St.* Joseph and Kansas City, but St. Joseph only obtained from Missouri an increase of 14,000 head, and during 1901 and 1902 Chicago received from the state of Missouri 150,000 more cattle than did St. Joseph and from Kansas the increase at St. Joseph was only 34,000 head, and from Ne-
1377 braska 19,000. Her gain and loss from Oklahoma and Indian Territory being about equal and her increase from Texas was something unusual and not permanent. Sioux City shows a loss of 13,000 head, the loss being 7000 in Nebraska, 37,000 in South Dakota, a gain of 7000 stopping to feed in transit from New Mexico, and a gain of 18,000 from her own legitimate territory Northwestern Iowa. Chicago obtained her increase of 500,000 from Kansas, Nebraska, Minnesota, South Dakota, Missouri and Iowa.

The COURT: What increase did Chicago get from Iowa?

A. That I can only show your Honor, for the years 1901 and 1902, from Iowa to Chicago, we endeavored to obtain the origin from the Chicago yards but they declined to give it for the other years 1903 and 1904, and the seven months of 1905, so that I am unable to state what number of cattle and hogs and sheep Chicago got out of Iowa for those later years.

Mr. RANSOM: Did you personally make application to the Stock Yards here in Chicago for that information?

A. I did for 1903 and 1904.

Q. And did they formally decline to give it?

A. They excused themselves on the ground that they were changing their form of statistics.

Q. They didn't furnish them?

A. No sir.

Q. Now this statement shows that Chicago received in 1904 333,000 of cattle more than it received in 1902; can you
1378 point out where this increase or any part of it came from?

A. Well I can't give it in the same manner that I have for the previous years, if you desire it in detail.

Q. Well, can you state about the localities?

A. From the same territory?

Q. By states?

A. From the same territory?

Q. How many hogs did Chicago receive in 1901?

A. Chicago received in 1901 8,290,494.

Q. How many hogs were received by the other stock markets St. Louis to St. Paul during that year?

A. 11,710,000.

Q. Now hogs are generally supposed to travel short distances to market, are they not?

A. Yes sir.

Q. How many hogs from Iowa went to Chicago in 1901?

A. 3,854,775.

Q. How many went to Kansas City, Omaha, Sioux City, and the other shorter distances?

A. 1,400,000. Chicago got in that year from Missouri 400,000 hogs; from South Dakota 163,000; Minnesota 387,000.

Q. And how many did St. Louis get? Have you got that there, that year?

A. It is stated there: From the State of Illinois Chicago received five times as many as St. Louis secured from the same state.

Q. Out of Illinois?

A. Yes sir.

Q. In territory nearer St. Louis than Chicago?

A. Why some portions of it, that is from the entire state.

Q. Did you state how many went from South Dakota, how
1379 many hogs in the year 1901?

A. Yes sir, 163,000.

Q. And 387,000 from Minnesota?

A. 387,000 from Minnesota.

Q. How many from North Dakota?

A. 5625 and from Oklahoma 1875 head.

Q. How many more hogs did the markets named outside of Chicago receive than Chicago received?

A. In the year 1901 the markets outside of Chicago received 3,400,000 more hogs than Chicago, but in the year 1904 they received 2,900,000 in excess of Chicago receipts.

Q. You know Mr. Kenyon, the capacity of the Stock yards here in Chicago?

A. No, I don't know the number.

Q. Do you know — the capacity of the Kansas City yards is?

A. Why I think it is stated in their annual report.

Q. Is that in evidence?

A. I don't recall.

Q. Has that been put in evidence?

A. I don't know.

Q. What is the capacity of the St. Joe yards; do you know that?

A. They are somewhat less than the capacity of the Omaha yards.

Q. And what is the capacity of the Omaha yards?

A. The Omaha yards can accommodate 20,000 cattle, 30,000 hogs and 35,000 sheep per day.

Q. But can you state about what the average receipts are daily there at the yards?

A. Yes sir, our average receipts last year were 7300 hogs, 3000 cattle, 5600 sheep.

Q. How much does that fall short of the capacity of the yards?

A. The capacity of the packing houses at South Omaha
1380 daily are 17,500 hogs, 10,000 cattle and 8000 sheep.

Q. And what packing houses do business there in South Omaha?

A. The Cudahy Packing Company, Swift & Company, The Omaha Packing Company and Armour & Company.

Q. How many more hogs did Chicago receive in 1904 than was received in 1903?

A. That is shown on the last page of that Exhibit.

Q. I just want you to state it to the reporter so that I will get something in the record.

A. The receipts of hogs at Chicago for 1901, were 8,290,000, in 1902, 7,895,000; in 1903, 7,325,000; in 1904, 7,238,000 And for the seven months of 1905 4,676,000.

Q. Now referring to your statement about the decrease of the receipt of live stock at the Missouri river points and St. Paul and the failure to increase in proportion to the other markets, how many years will it be before Chicago on the present freight rates and train schedules as they are now adjusted will it be before Chicago receives as many hogs as all markets from St. Louis to St. Paul inclusive? Have you made that calculation?

A. Well I had a ratio of—all the markets outside of Chicago received in 1901 3,400,000 more than Chicago, and in 1904 they received 2,900,000 in excess of Chicago receipts. Now there has been no change in the rates of freight or train schedule since
1381 1901, and if Chicago continues to receive as many hogs in the future as it has in the past it will take about six years before Chicago will receive as many hogs as all these other markets combined; that is the ratio of increase.

Q. Will you please file with your testimony a statement marking it "Kenyon's Exhibit B," showing the total number of live stock, consisting of cattle, hogs, sheep, horses and mules received during the year 1901, at Chicago, Kansas City, St. Joe, etc.?

A. Those same figures are found in this Exhibit A, but this statement is made up showing the percentages that Chicago, Kansas City and Omaha received out of certain territory, Illinois, Kansas, Missouri and Nebraska. For example Chicago out of the state of Illinois received 24 per cent. of all her cattle receipts; 32 per cent. of all her hogs receipts and 20 per cent. of all of her sheep receipts; but Chicago received out of the state of Iowa 33 per cent. of all of her cattle; 42½ per cent. of all of her hogs; and 24.7 per cent. of all of her sheep. Now the same percentages are made in this statement from Kansas City, receipts from Kansas and Missouri into Kansas City and receipts from Nebraska and Iowa into Omaha, and from Nebraska and Kansas into St. Joseph figured out by percentages of actual receipts.

The statement produced by the witness was marked "Ex-
1382 hibit B" and filed with the Court as part of his testimony.

Q. Please file with your testimony a statement showing the receipt

of cattle, hogs and sheep at Omaha from the different railroads entering into that city.

A. This is a statement "Exhibit C" which shows the receipts at Omaha by all lines of all classes of live stock for the years 1903 and 1904, showing a decrease in 1904 as compared with 1903 of 33,962,000 head of cattle; 120,246,000 head of hogs and 6,722 head of sheep. The only increase by any line into Omaha being that of the Chicago Great Western which shows an increase of 7000 head in 1904 over 1903; 30,000 hogs and about the same number of sheep; 1731 as compared with 1748.

Q. From what sources was this information compiled?

A. From our own records.

Q. You keep a record of the stock you receive off of each railroad?

A. Yes sir, and its origin.

Mr. SEVERANCE:

Q. Wasn't 1904 the first year the Great Western was in there?

A. Oh no.

Q. They built in there in 1903?

A. Well they were in operation the better part of 1903, as I recollect.

Q. Only part of the year; that accounts for their having an increase and the others not.

(No answer.)

Mr. RANSOM: Can you explain that increase coming from over the Great Western road into South Omaha?

1383 A. We had very favorable rates from the Great Western road into South Omaha, but no more favorable than are the rates made into Chicago. The Great Western takes their line and cuts it in two equidistant between Chicago and Omaha, and the rates west of that point are lower to Omaha than they are from those stations to Chicago. Correspondingly rates east of this dividing line to Chicago are lower than the rates from those stations to Omaha. Now they do the same thing in their basis of construction of their tariff between Omaha and St. Paul, so that they divide the territory absolutely in two.

A recess was here taken until 2 o'clock the same day, September 28, 1905.

1384 THURSDAY, *September* 28, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon WILLIAM J. C. KENYON, resumed the stand for further direct examination by Mr. Ransom:

Q. Look at the paper which I hand you marked "Kenyon's Exhibit B," and state to the court what that is in a general way?

A. This is a statement showing the purchase by the packers for the years 1903 and 1904 at South Omaha and direct consign-

ments made from other markets to various packers at Omaha for the same period.

The packers at Omaha did not receive enough business so they had to go to other markets. The total in 1904 of purchases of cattle by the packers was 630,768 head; 1,856,000 hogs, 990,000 sheep as compared with 702 head of cattle in 1903; 1,776,000 hogs, 963,000 sheep, a decrease of 70,000 cattle and an increase of 80,000 hogs; an increase of 27,000 sheep in 1904 as compared with the previous year.

Q. Is that statement made up or compiled from reliable sources?
A. It is made from our official records.
Q. Kept in the stock yards?
A. Yes sir.

1385 (The statement produced by the witness is marked Exhibit D, and attached hereto.)

Q. Have you prepared a statement showing the amount of live stock consumed by the various packers at Chicago, Kansas City, South Omaha, St. Joe, Sioux City, St. Louis and St. Paul?
A. I have.
Q. Is that the paper marked "Kenyon's Exhibit E."
A. It is, yes sir.
Q. I will ask you how much of the live stock, hogs and cattle (having reference only to hogs and cattle) received at the Union Stock Yards at South Omaha is consumed there, what percentage of it?
A. That is shown in another exhibit.
Q. Is that shown in another exhibit?
A. Yes sir.
Q. Then I withdraw that question. Please file that paper marked "Exhibit E" with the reporter as a part of your testimony.

(The statement produced by the witness is marked "Exhibit E" and attached hereto.)

Q. That is compiled from what?
A. The same sources, our official records.
Q. The official records kept in the Stock Yard Company's office at South Omaha?

A. Well, with the exception, of course of those receipts at
1386 Kansas City, South Omaha and St. Joe and these other markets.

Q. Where did you get that information?
A. From their published annual reports.
Q. Have you prepared a statement showing the receipts and disposition of the live stock at South Omaha?
A. I have.
Q. For the years 1903 an- 1904. Is this the paper marked "Kenyon's Exhibit F."
A. It is.
Q. Does that show the disposition of all the live stock having reference now only to cattle and hogs received at South Omaha during the years 1903 and '4?

A. It does. This statement shows the receipt and disposition of live stock at those markets for those years under sub heads. "Sold to packers, consigned direct to packers, forwarded in first hands, forwarded not on the market, sold to speculators, feeders," etc.

Q. Well, is that the statement that shows the percentage that is consumed of that received at South Omaha or from that can you make such a statement?

A. Well, I can make that statement now, but there is another statement that shows that.

Q. Well, make that statement right there.

A. Well, all of those receipts, of those receipts as shown sold to packers 630,000 cattle, 1,856,000 hogs, and 990,000
1387 sheep—Well, the sheep you don't want—were sold to the packers at that point and went into the packing houses and were made into product.

Q. File that Exhibit, will you, with your testimony?

A. Yes sir. There is one thing in this that I want to explain. "Forwarded in first hands, 9816 sheep in the year 1904, 821 hogs, 102,704 sheep" that means that of our total receipts to that extent we failed to give the shippers satisfaction in price and he concluded to go on to other markets on his original through rate. The other item "Forwarded not on the market" were shippers who came in simply for rest and feed. They never offered their live stock on the market for sale and went on to their destination. In the year 1904, there were 25,000 head. The consumption of South Omaha, either by the packers or sold to speculators and shipped by feeders. In the year 1904 of cattle 96 per cent. All the hogs were sold and 94 per cent. of the sheep were sold or slaughtered.

Q. What became of the four per cent. that were not consumed there?

A. In cattle, that would consist of the two items, forwarded in first hands and forwarded not on the market.

Q. Have you prepared a statement showing the shipments by feeders at the various markets at Omaha, Denver, Sioux City and Kansas City?

A. I have.

Q. By states. Is that the paper I hand you marked "Kenyon's Exhibit G."

A. It is.

1388 Q. Please explain that?

A. It is a statement showing the shipment of feeder cattle and stockers from Omaha, Denver, Sioux City, and Kansas City to the states of Nebraska, Iowa, Kansas, Missouri, Illinois, South Dakota, Colorado, Wyoming and other states, the amount being small to other states for the years—this is from January 1st to July 31st, 1905 as compared with the same period in 1904. With that there is another similar statement for the year 1904 compared with 1903. The total for 1905 from Omaha was 111,000 head, from Denver, 103,000, from Sioux City, 135,000 and from Kansas City, 248,000 to the states mentioned. We are unable to show the feeder shipments from Chicago as we have not got access to their records.

Q. Look at the other paper and state whether that is a part of the same statement?

A. This is a statement for the calendar year 1904 compared with 1903 from the same markets to the same destination.

Q. Please attach that to Exhibit G, as a part of it and file it with the reporter.

(The statement produced by the witness is marked "Exhibit G" and attached hereto.)

Q. Have you prepared a statement showing the percentage of receipts at the various markets, at Omaha, Kansas City, Chicago, St. Joseph for the year 1904?

A. I have.

1389 Q. Is that the paper, marked Exhibit H?

A. Yes sir.

Q. Please state what that paper is and file it with the reporter as a part of your testimony?

A. This shows the number of cattle, hogs and sheep killed, the receipts, and also the number of head killed at Omaha, Kansas City, Chicago and St. Joseph. These are taken from their published records and it shows that the total receipts of cattle at Omaha, of those receipts that that market killed 68 per cent. Kansas City killed of her receipts, cattle 51 per cent. Chicago killed 61 per cent. St. Joseph killed 73 per cent. Of hogs, Omaha killed 91 per cent., Kansas City, 93 per cent., Chicago, 77 per cent., and St. Joseph 94 per cent. of the receipts at those markets respectively. The percentages are figured out on the sheet as well.

The COURT: What was done with the other not killed?

A. They went out as feeders, in respect to cattle or were shipped forward in first hands or not on the market, and so far as sheep are concerned it was principally feeders. The difference of 10 per cent. in hogs is that hogs are shipped from Omaha to Boston, Cudahy, Wisconsin, Indianapolis and some to St. Louis and some to Kansas City, and killed at those various points of destination.

Mr. RANSOM:

Q. Look at this paper and state what that is?

1390 A. This is a statement showing the feeder statements of Omaha, Sioux City and Kansas City, to Nebraska, Iowa, Kansas, Missouri, Illinois, South Dakota, Colorado, Wyoming and other states for the year 1901 and 1902.

Q. Please file that with your testimony and mark it "Kenyon's Exhibit H. H."

A. I will mark that "Kenyon's Exhibit *Ga*."

Q. Well, mark it anything you want it.

(The statement so produced by the witness is marked "Kenyon's Exhibit *Ga*" and attached hereto.)

Q. Have you collected the published rates of the railroad traversing the 23½ cent zone that has been mentioned here in eastern Iowa, Missouri and Minnesota?

A. In eastern Iowa, only.

Q. Only of eastern Iowa. You don't cover Missouri?

A. Some of the tariffs show rates from Missouri and some from Minnesota.

Q. They are practically the same rates, aren't they right along the river there?

A. This has reference to South Omaha, only.

Q. Then you have collected the published tariff sheets by the different railroads running into the Missouri river and tributary to Sioux City and South Omaha so far as Iowa is concerned?

A. To South Omaha only. I did not get the rates to Sioux City or St. Joe.

1391 Q. Well, are these the papers marked "Kenyon's Exhibit Z-1."

A. They run from Exhibits I to Z-4.

Q. Are these the published tariff rates marked Kenyon's Exhibit I to Z-1, Z-2, Z-3 and Z-4?

A. They are.

Q. You received those from the railroad companies offices?

A. I did.

Mr. RANSOM: We offer those in evidence.

The COURT: File them with the reporter.

Mr. BAXTER: If they became a part of the transcript in this case it will add very much to the cost of making up the transcript.

The COURT: Can't you arrange that when you come to make up your record?

Mr. COWAN: I think so, I think it can be arranged.

Mr. BAXTER: As long as the report shows that they are put in evidence, the clerk will make them a part of the record.

Mr. COWAN: We ought to be able to agree and have some rate clerk make up all these tariffs in one separate sheet.

Mr. RANSOM:

Q. I neglected to ask you what packing houses are in operation in South St. Joe?

A. Swift & Company, the Hammond Packing Company,
1392 Nelson Morris & Company, and I think there is one other packer whose name escapes me at this time.

Q. How long have the stock yards been located at South St. Paul?

A. Since 1884.

Q. What was the population of South Omaha when the yards were located there?

A. There was no population.

Q. A new city was located there and sprung up there soon after the stock yards were located there?

A. Yes sir.

Q. What is the population of South Omaha now?

A. 30,000.

Mr. RANSOM: That is all.

Cross-examination by Mr. BAXTER:

Q. Mr. Kenyon, have you had any experience or knowledge of the Chicago market, sufficient to state the general class of persons who purchased the live cattle and hogs that are brought in here? I suppose in the first place a large portion of them are brought by the packers in Chicago to be slaughtered?

A. I would assume that the same classes of people engaged in the live stock business here in Chicago as in Omaha or other Missouri river markets.

Q. Please state the class of persons who purchased the live cattle and hogs that are brought into these stock yards like Chicago
1393 and the stock markets on the Missouri river?

A. There would be packers and export shippers, the speculators and the feeder buyers.

Q. The packer purchases for the purpose of slaughtering in the market, does he, where he buys?

A. Yes, or for the purpose of shipment if he is an exporter. We have no exporters at Omaha.

Q. Sir?

A. We have no exporters at Omaha.

Q. The packers in Chicago——

A. I would not know in Chicago what the packers did with the cattle that they purchased.

Q. There are men here who purchase cattle for the purpose of export?

A. Yes sir.

Q. And they are shipped as cattle to New York and then as live animals, across the ocean, is that it?

A. Yes sir.

Q. Well, are there any persons who purchase cattle in the markets in the west who ship them to the east and slaughter them there?

A. Not at our market. We have speculators at our market who ship to Chicago but not to be slaughtered by the original purchaser in Omaha. They come on this market.

Q. You say you have no persons at Omaha who purchase live stock and ship them to the east?

A. There are order buyers out in Omaha.

1394 Q. Sir?

A. There are order buyers out in Omaha who purchase hogs, for example, on our market for shipment to the packers located at Cudahy, Wisconsin. Squires of Boston Kennedy & Company of Indianapolis, the McCrea Packing Company of St. Louis. Those order buyers are constantly on our market and they make shipments to those packers that I have mentioned.

Q. Then the men who buy the stock for feeding—Do I understand from that that they purchase animals that are not fit at the time, not fat enough to be slaughtered at the time and they ship them as live animals out to some point, to be fed and prepared for the market?

A. Yes sir.

Q. Now the speculator, what does he do with the live stock that he buys?

A. He sells his stock that he buys to these feeders. The feeders purchase that that you speak of. It is seldom that a man can come into the market and buy his cattle or his sheep himself and know the ruling price in the market. It is customary for him to buy from other parties or engage the services of a live stock commission man to make the purchases for him. He does, however, buy it first hand from these so-called speculators who have originally bought the fresh receipts from the commission houses to whom they have been consigned.

Q. Well, the commission man that buys live stock here on
1395 the market at Chicago or Omaha, what does he do with it, sell it to the packers?

A. The Commission man buying the stock?

Q. Does he buy it?

A. No, the stock is consigned to the commission man for sale by that commission man to whatever purchaser he can find.

Q. Are those men who engage as commission men or members of these live stock exchanges, are they engaged in the pork packing business, too, or the manufacturing of packing house products?

A. I don't know of any that are so engaged.

Q. They confine themselves to dealing in the live animal?

A. Yes sir.

Q. And acting as agents of others?

A. Yes sir.

Q. Do any of the exhibits which you have filed in your original examination contain a statement showing the number of head of cattle and calves, and the number of head of hogs received at Chicago, Kansas City, Omaha, St. Joseph, Sioux City, St. Louis and St. Paul during the years 1901, 1902, 1903, 1904, and the first seven months of 1905?

A. Exhibit A covers that, the receipts at those various markets that you have mentioned.

Mr. SEVERANCE:

Q. Mr. Kenyon, during the year 1904 there was a strike lasting a considerable time at the stock yards, was there not?

1396 A. Yes sir.

Q. And in the packing houses?

A. Yes sir.

Q. And the amount of live stock received in Chicago at the stock yards during the strike was less than the ordinary amount during the same period?

A. The same period of the previous year?

Q. Well, of ordinary years?

A. Yes, that strike continued for two months, from the 12th of July to the 12th of September.

Mr. RANSOM:

Q. Where was that strike?
A. At all the packing centers, St. Louis, St. Paul, Chicago and Fort Worth.

Mr SEVERANCE:

Q. It lasted longer in Chicago, did it not?
A. No, the strike went on the same day and went off the same day at all points.
Q. It was more severe here?
A. It was more severe in South Omaha so far as business was concerned. We recovered from that strike later than anyone else.
Q. It was more severe in Chicago than in St. Paul?
A. Certainly this is a larger place and there is more sentiment here, more feeling.

Mr. LYNDE:

Q. Are those packers at St. Paul and South Omaha the same who are engaged in the business at Chicago?
1397 A. With the exception of the Cudahy Packing Company, they have no plant here.
Q. But they have a plant up here in Wisconsin?
A. Cudahy, yes sir. I am not informed however whether the Cudahy Packing Company at South Omaha and Sioux City and Kansas City is the same concern as Cudahy Brothers at Cudahy, Wisconsin.
Q. The same parties are interested in both, are they not?
A. I don't know.

Mr. RANSOM:

Q. Will you state how far it is from the west end of the Union Pacific bridge to the stock yards in South Omaha?
A. We figure on 7 miles.
Q. And does the stock yards company act as the terminal company for the receipt of shipments of hogs and live stock or freight brought into the packing houses?
A. Yes sir.
Q. And it has its own engines and tracks?
A. Yes, does all the switching. All these industries are located on the stock yards tracks.

Cross examination by Mr. COWAN:

Q. It charges how much on packing house products and dressed meat?
A. $2.00 a car out.
1398 Q. Is there a bridge charge across the river there on packing house product and dressed meat?

A. I would say no, Mr. Cowan.

Q. Why do you put it in that form?

A. Well, for the reason that prior to 1882 the Union Pacific Railroad made an arrangement with the Iowa lines by which freight into and out of Omaha was not charged at so much a car. They leased their bridge and terminal facilities to those lines on a certain rental per annum and that arrangement was extended to South Omaha, after the rates were established at that point in 1884. But the railroads leading from Iowa to South Omaha, the tolls on the Union Pacific bridge were reduced from time to time. Just when the $4.00 so-called bridge toll was made, I have no information, but the lines leading from Iowa to South Omaha, taking the Iowa distance tariffs to Council Bluffs, added this $4.00 bridge toll arbitrarily to that rate. For years they published their tariffs based on the Iowa distance to Council Bluffs with $4.00 added. We have succeeded in getting some of the roads, the majority of them, to eliminate the appearance of the $4.00 bridge toll and to put it in to the through rate.

Q. The packing house product and dressed meat going across the river there are subject in some instances to bridge toll, are they not?

A. I think not.

1399 Q. How long has it not been so?

A. As long as I have known anything about it, for the last eight years.

Q. You say the charge is for switching and that is absorbed by the railroads in the case of Omaha, both on the live stock and packing house products?

A. Yes sir.

Q. When livestock is sold to speculators or persons who buy of these various concerns in the east, what is the rate of freight on which they move eastward?

A. The tariff rates, so far as I know.

Mr. RANSOM: I will object to that, your Honor, as not proper cross examination. I did not ask him anything about rates, I simply had him identify some papers here that are used by the railroads.

The COURT: Objection sustained.

Mr. COWAN: How is that?

The COURT: He has answered by saying that he did not know.

Mr. COWAN:

Q. You have said that hogs were supposed to travel short distances to market. Why?

A. It is generally understood that taking the summer months, the hogs lose in weight by reason of the hot weather. The hogs are raised more plentifully than cattle. Shippers seem to desire to make their markets for them at nearby points.

1400 Q. There is an advantage then in the difference of the shrinkage between the hogs raised 100 miles east of Omaha market being marketed at Omaha, or marketed at Chicago?

A. Well, I was under that impression until I heard Mr. Doud's testimony before the Interstate Commerce Commission.

Mr. RANSOM:

Q. Who was that?

A. Mr. Doud, one of the commission men in Chicago.

Mr. COWAN: Well, you have given your reason.

A. I think a hog would shrink more going 500 miles in one direction that he would going 100 miles in the other direction.

Q. Well, I asked you the reason why and you said what you thought your reason was. Then I asked you if you thought they would shrink more going to Chicago than to Omaha and you say you thought so until you heard Mr. Doud's testimony. What is your impression now?

A. Mr. Doud has been in the business a great many years and hogs were shipped to him and he testified that hogs would shrink all they were going to shrink in the first 50 miles. I think he is mistaken.

The COURT: He says he thinks Doud was mistaken. That answers the question.

Mr. SEVERANCE: That eliminates Doud.

Mr. COWAN:

Q. You still have the reason that you gave?

1401 A. I think hogs will shrink more traveling 500 miles than they will in traveling 100, and I think a steer will shrink more, too.

Q. So do I. Is it an advantage to the shipper therefore to have a nearby market?

A. It usually is.

Q. Why besides that, is there any other reason?

A. When the nearby market relatively pays him as good a price as the distant market and he has less freight to pay. He has less shrinkage on his production. It enables him in many cases to get his money quicker. He does not have to be so long away from home and if I had time I probably could think up a whole lot of other reasons why, if I was a shipper, I would ship to the nearby market.

Q. Well, now, what do you mean by relative price?

A. Well, that would be the commercial price placed upon the article for sale.

Q. That is quite as indefinite to me as relative price. What price do you mean?

A. For example, if I were shipping a carload of cattle and I wanted to make up my mind whether I would ship that carload of cattle to Omaha or to Chicago, I would first take into consideration the freight rate, the distance and time consumed and I would en-

deavor to ascertain what those two figures would produce, and if I had the privilege of stopping at a nearby market in the direct line,
1402 I would stop there and see whether the purchasers at that market would pay me the price that I thought I could obtain at the distant market. Now, if I was not satisfied with that price, I would ship to the next stopping place until I finally got to the jumping off place, which, in this case is Chicago.

Q. If the shipper has the advantage of the shrink and the advantage of the less rate and gets as good a price at the Missouri river market, why don't he ship there instead of to Chicago and pay a high rate.

1403 A. Well, I find that at Chicago, the receipts of hogs for last year, 46½ per cent. came from the State of Iowa. I also find that in Chicago every day there are held over hogs that have not been sold at all, and in some cases I advertised that some years ago in the effort to enlighten the Iowa shipper in the endeavor to get him to come to South Omaha. I find that as high as 16,000 hogs were held over here in Chicago in one day, not purchased by anyone. If the Iowa shipper furnishes merely one-half of the hogs, one-half of this 16,000 you might say belong to him and why he does not come to a near by market from points 250 miles, if you please, away, I am unable to say, unless it is that the train arrangements and the train facilities and faster time has a good deal to do with carrying in to the distant market like Chicago. There may be some sentiment in it, too. He may want to come here to a big town.

Q. Doesn't it arouse your suspicions that your price is not as good as he thinks he can get at Chicago?

A. If that was the case we would not get any business from Iowa at all.

Q. Then you have the advantage of the lower freight rate and the advantage of the shrinkage?

A. The difference in the price is figured with the rate that he obtains from this 23½ cent zone, the shipper must have figured
1404 that out, and that must be the reason that he goes to Chicago, for better facilities. Then, too, he thinks he is doing as well in Chicago as his neighbor, because his neighbor has been coming here for 30 or 40 years.

Q. It is simply a question of perverseness and ignorance in coming to Chicago?

A. We have been trying to educate these Western Iowa people for a good many years to come to the Missouri River.

Q. Isn't it a fact that if he ships into the Missouri River market, and he did want to ship back, he has to pay 23½ cents a hundred?

A. He has to pay the tariff rate, whatever it is.

Q. And if the packer wants to buy and kill them, he can ship the dresses carcasses back at 20 cents. Don't that give the packer that much advantage over him?

A. I am not familiar with those rates.

Q. When it is consumed on the market, doesn't the packer have a 3½ cent advantage of him any way you can fix it?

A. I have not figured that out. The fact is this, that when he ships to our market and is not satisfied with the price, we don't see him again until he wants to try another experiment, and perhaps on the next shipment our market is all right.

Q. Who owns the stock yards in South Omaha?

1405 Mr. RANSOM: I object to that, as immaterial, and not proper cross-examination.

The COURT: I am inclined to think so. I allowed it in one case and refused it in another. I will sustain the objection.

Mr. COWAN: I desire to except to the ruling of the Court in that particular. That is the only exception that I have taken.

To which ruling of the Court the complainant, by its counsel, then and there duly excepted.

Q. Isn't it a fact that Chicago has a less proportion of the total live stock shipments than it had four years ago or five years ago, or six or eight or ten years ago, as compared with the Missouri River markets?

A. I would have to refer to that Exhibit there. I think I could answer your question from 1901 down.

Mr. LYNDE: It is before you, Mr. Kenyon.

The COURT: I am inclined to let Mr. Cowan figure that out for himself in the argument.

The WITNESS: Those are pretty big figures to carry in one's mind as between all the markets.

Mr. COWAN:

Q. Isn't it a fact that there are a lot of stock driven into South Omaha?

A. I desire to refer to the figures on that, yes, sir.

1406 Q. Well, whether it is great or small. Your annual report will show, won't it?

A. I don't know whether it will or not.

Q. How many were driven in?

A. Into Omaha, in 1901, there were 14,000 cattle, 1902, 13,000,—I will leave off the odd hundreds—in 1903, 11,000; 1904, 12,000, and the seven months of 1905, 9,900, and of hogs there is considerable that drive in. In 1901, 39,000; 1902, 36,000; 1903, 32,000; 1904, 34,000, and the seven months of 1905, 27,000.

Q. Where did they come from?

A. Those come from nearby points within ten miles of South Omaha to the southwest and about fifteen miles over in Iowa.

Q. Suppose a man drives in 150 head of cattle that he has bought in the market and fed near South Omaha. What rate of freight does he get out?

A. The tariff rate, so far as I know.

Q. If the packer buys those and ships them out, he gets the rate on the product?

A. As product, that is?

Q. Isn't it a fact that that gives the packer an advantage of 3½ cents over the shipper of the live stock in the rate, cents per hundred pounds?

A. I could not answer that.

Mr. RANSOM: I object to that, as immaterial, and calling for a conclusion and asking the witness to decide the case.

The COURT: What did you answer?

1407 A. I could not answer that, it is a commercial discussion as between the packer and the shipper.

Mr. COWAN:

Q. What becomes of those hogs and cattle that are driven into that market in the distribution of that stuff?

A. Of the hogs, they are invariably sold to our Omaha packers.

Q. Why are they never shipped east?

A. Well, it so happens that they are centralized by a few shippers. Most of the hogs that are driven in are consigned to one or two concerns, and it is their invariable practice to sell the stuff to the packers there in Omaha.

Q. Suppose the hogs were shipped in from Lincoln? If the shipper has a mind to move them out, he moves them out on the balance of the rate, doesn't he?

A. The shipper——

Mr. RANSOM: I object to that, as not proper cross-examination.

Mr. COWAN: Here is a man doing business right on the market.

The COURT: Objection sustained. It is true that he is doing business there but counsel did not ask him anything about it on direct examination.

Mr. COWAN: That is all.

The COURT: Is there anybody else on the part of the de-
1408 fense?

Mr. SEVERANCE: Your Honor, that report is here now. I would like to have it attached as an exhibit to Mr. Flower's testimony. It was referred to by him and identified by him.

The COURT: All right.

Mr. COWAN:

Q. Mr. Kenyon, your annual report of the Stock Yards Company shows accurate statistics with respect to the various matters contained therein as to receipts and shipments of live stock?

A. Whatever is in those annual reports is correct.

The COURT: Proceed for the Interstate Commerce Commission.

Mr. LYNDE: I shall call the witness I referred to later. Mr. Cowan wants me to postpone that.

The COURT: All right.

Mr. COWAN: We have some witnesses that have been summoned

here that we would like to put on this evening and get through with as rapidly as we can.

Mr. SEVERANCE: May I inquire whether the Court will sit Saturday this week?

The COURT: I don't sit Saturday unless it will accommodate counsel. I would like to ask also as to these hours. I am willing to sit longer hours if counsel wish.

Mr. SEVERANCE: I do not think it would be a good plan.

Mr. COWAN: I don't think it would be any advantage.

ORIGIN OF LIVE STOCK SHIPMENTS BY STATES

Figures showing receipts of all kinds of live stock at seven western markets during years 1901-1902-1903-1904 and Seven Months of 1905, and states in which Shipments originated.

Kenyon's Exhibit filed Vol. 12, p. 1371.
Exhibit itself follows Vol. 12, p. 1408.

STATES	MARKETS	CATTLE AND CALVES					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	19
Iowa	Chicago				977,193	1,056,636				3,272,400	3,884,775				812,528	
	Kansas City	12,005	6,384	10,572	23,061	57,900	23,155	95,756	32,149	25,473	22,600	23	626	3,443	2,994	
	Omaha	61,119	96,600	143,071	115,347	109,581	321,996	689,307	939,932	876,396	806,212	13,995	29,520	25,891	49,050	
	St. Joseph	10,448	16,049	29,864	30,876	30,901	125,897	180,665	277,825	352,178	265,990	2,929	6,756	16,521	16,543	
	Sioux City	59,389	58,410	90,426	72,597	80,611	276,374	386,035	377,465	365,268	313,352	1,221	3,022	3,009	18,690	
	St. Louis	2,511	2,809	1,808	2,334	2,085	23,752	33,372	18,583	30,433	21,363	240	1,107	862	1,255	
	St. Paul	364	1,963	2,561	2,924	5,447	3,484	3,120	5,047	12,456	30,169	2	663	672	6,208	
Missouri	Chicago				223,440	274,386				240,825	401,250				179,912	
	Kansas City	136,876	292,931	262,621	182,727	362,698	396,382	624,892	590,020	725,654	1,117,508	71,600	115,919	107,073	112,996	
	Omaha	6,846	23,169	29,954	34,114	40,124	165	1,453	4,913	905	---	13,002	13,564	22,120	15,774	
	St. Joseph	68,412	188,960	187,462	173,305	170,710	317,127	618,689	601,393	550,555	682,600	37,138	62,084	77,252	51,787	
	Sioux City	663	4,654	2,762	2,441	1,900	---	---	1,567	68	---	150	---	1,615	---	
	St. Louis	145,799	392,121	286,485	189,072	292,403	648,839	1,202,808	920,650	620,591	1,017,850	204,654	354,015	266,989	227,820	
	St. Paul	---	---	234	---	---	---	---	---	---	---	---	---	---	---	
[illegible]us	Chicago				47,691	48,972				11,250	60,900				18,060	
	Kansas City	470,122	1,271,542	1,140,171	1,166,121	1,149,273	859,366	1,343,396	1,092,134	1,182,761	2,046,864	176,448	348,122	292,746	253,222	
	Omaha	2,429	5,814	7,989	6,669	9,167	230	2,755	7,857	5,340	8,959	4,087	1,083	2,287	648	
	St. Joseph	46,354	131,046	134,874	100,870	112,621	181,804	271,129	347,883	247,231	400,626	95,061	67,169	52,028	21,800	
	Sioux City	---	1,308	391	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	6,637	66,484	68,774	63,365	74,022	1,308	15,280	6,713	8,879	37,592	921	1,785	634	1,613	
	St. Paul	---	---	63	---	---	---	---	---	---	---	---	---	---	---	
Nebraska	Chicago				52,962	74,508				11,025	74,100				120,137	
	Kansas City	51,857	50,674	28,289	42,548	54,600	105,900	61,761	21,091	132,877	101,300	13,703	36,667	14,912	37,505	
	Omaha	355,794	590,061	647,155	520,831	514,888	1,192,231	1,599,909	1,272,488	1,357,597	1,598,438	445,051	605,745	590,925	393,406	
	St. Joseph	85,850	105,157	94,014	65,079	60,977	536,230	276,288	459,603	532,266	724,424	73,796	88,595	40,428	43,227	
	Sioux City	23,183	23,054	27,504	34,840	29,219	167,947	216,268	164,874	128,476	166,167	5,581	5,293	9,913	1,709	
	St. Louis	176	487	---	2,662	101	12,268	4,306	833	159	---	7,496	39,726	18,378	32,045	
	St. Paul	45	486	---	---	---	194	132	---	---	---	3,900	---	---	---	
So. Dakota	Chicago				157,878	85,008				144,900	163,725				183,352	
	Kansas City	---	68	138	126	---	379	---	10,875	---	---	---	---	190	---	
	Omaha	2,462	45,143	37,882	37,086	15,282	5,649	6,131	5,266	4,691	103	9,687	42,649	63,530	50,071	
	St. Joseph	---	40	---	478	---	278	---	---	---	---	---	---	---	---	
	Sioux City	53,432	129,081	121,117	158,637	95,861	320,285	428,943	375,058	413,508	381,288	3,131	18,717	21,569	31,147	
	St. Louis	---	603	---	---	---	---	---	---	---	---	---	---	---	782	
	St. Paul	4,125	14,192	11,272	7,599	3,973	41,709	52,225	37,745	39,388	25,542	2,917	7,619	11,057	6,015	
Minnesota	Chicago				119,343	104,538				441,900	387,075				332,992	
	Kansas City	995	1,300	3,216	4,358	---	123	122	123	328	---	---	---	---	---	
	Omaha	2,072	1,156	2,187	4,872	6,770	77	---	198	322	161	565	118	1,936	593	
	St. Joseph	1,260	1,172	1,891	503	1,166	---	---	---	---	---	---	---	---	---	
	Sioux City	50,269	55,530	65,004	54,130	62,921	59,150	80,808	88,077	83,861	73,650	335	408	1,700	4,008	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	120,004	180,807	166,771	161,423	110,968	431,159	705,781	513,299	536,929	499,447	31,434	100,716	90,148	75,418	
Illinois	Chicago				665,133	781,767				2,273,325	2,641,425				645,860	
	Kansas City	143	701	171	492	---	---	---	11	33	---	---	455	1,011	188	
	Omaha	127	21	148	94	953	---	---	---	---	---	---	177	---	---	
	St. Joseph	48	10	---	186	40	---	---	---	---	---	265	---	---	---	
	Sioux City	33	527	10	151	75	---	---	---	---	---	610	246	---	---	
	St. Louis	60,059	88,193	74,160	76,196	71,029	397,290	519,671	435,761	549,627	547,604	47,193	99,450	103,474	118,803	
	St. Paul	---	104	30	---	---	---	---	---	---	---	---	143	---	---	

'S BY STATES

seven western markets during years

f 1905, and states

imated.

Kenyon's Exhibit filed Vol. 12, p. 1375.
Exhibit itself follows Vol. 12, p. 1408.

1017

1405a

1902	1901	HOGS 7 Months 1905	1904	1903	1902	1901	SHEEP 7 Months 1905	1904	1903	1902	1901	HORSES AND MULES 7 Months 1905	1904	1903	1902	1901
977,193	1,056,636				3,272,400	3,884,775				812,528	999,664				36,300	40,220
23,061	57,900	23,155	95,756	32,149	25,473	22,600	23	626	3,443	2,994	---	2,234	3,343	2,264	2,933	4,100
115,347	109,581	321,986	689,307	939,932	876,396	806,312	13,995	29,520	32,891	49,050	31,587	1,714	2,186	2,080	2,059	1,774
30,876	30,901	125,897	180,665	277,825	352,178	265,990	2,929	6,756	16,521	16,549	18,314	1,695	3,076	2,350	3,163	2,115
72,197	80,611	276,374	386,035	377,465	265,268	313,352	1,221	3,022	3,009	18,690	11,226	1,855	204	1,214	1,269	722
2,334	2,085	23,752	33,372	18,583	30,432	21,363	240	1,107	862	1,255	1,459	5,547	16,382	9,050	6,019	6,454
2,924	6,447	3,484	3,120	5,047	12,456	30,169	2	663	672	6,908	3,205	109	120	131	316	177
225,440	274,386				240,825	401,250				179,913	271,932				12,840	14,340
182,727	362,698	396,382	624,892	690,020	725,654	1,117,508	71,600	116,919	107,073	118,999	138,600	7,336	12,630	12,965	17,174	21,500
34,114	40,124	165	1,453	4,913	905	---	13,002	13,564	22,120	15,774	16,093	148	230	206	806	336
173,305	170,710	317,127	618,689	601,393	550,555	682,600	37,138	62,084	77,252	51,767	44,213	2,460	2,821	2,216	2,772	2,449
2,441	1,900	---	---	1,667	68	---	150	---	1,616	---	---	---	1	253	54	---
189,072	292,402	648,639	1,202,808	920,650	620,691	1,017,850	204,654	304,015	266,989	227,820	280,464	31,093	68,496	43,924	35,372	52,324
---	---	---	---	---	---	---	---	---	---	---	---	140	1	4	---	---
47,691	48,972				11,250	60,900				18,060	31,304				2,900	2,640
1,266,121	1,149,273	869,366	1,343,396	1,092,134	1,182,761	2,046,864	176,448	348,122	292,746	253,282	264,700	15,764	33,369	30,934	32,082	37,500
6,669	9,167	230	2,755	7,857	6,340	8,959	4,087	1,083	2,287	649	1,903	93	105	339	448	159
100,870	118,621	181,904	271,129	347,883	247,231	400,626	95,061	67,169	52,028	21,800	28,763	1,966	3,571	3,484	2,272	2,252
---	---	---	---	---	---	---	---	---	---	---	---	---	---	28	---	---
63,365	74,022	1,008	15,280	6,713	8,979	37,592	921	1,765	634	1,613	4,263	4,570	11,307	7,582	6,642	5,136
---	---	---	---	---	---	---	---	---	---	---	---	---	---	47	---	---
52,962	74,508				11,025	74,100				120,137	127,256				6,460	8,580
42,548	54,600	105,900	61,761	21,091	132,877	101,300	13,703	36,667	14,912	37,505	27,700	2,671	5,254	3,243	5,499	7,500
820,831	514,888	1,193,231	1,599,909	1,272,488	1,357,587	1,598,438	445,081	605,745	590,925	393,406	468,136	5,366	11,266	9,123	7,518	10,034
66,079	60,977	536,230	276,288	459,603	532,266	724,424	73,796	89,595	40,428	43,227	35,248	5,196	8,918	5,203	4,250	5,713
34,840	29,219	167,947	216,269	164,874	128,476	166,167	5,391	5,293	9,913	1,709	5,940	919	525	602	854	848
2,662	101	12,269	4,306	833	159	---	7,496	39,726	18,378	38,045	19,175	5,471	12,175	7,879	3,247	5,957
---	---	194	132	---	---	---	3,900	---	---	---	---	112	---	442	---	---
157,878	85,008				144,900	163,725				183,352	145,856				2,160	2,820
128	---	379	---	10,875	---	---	---	---	190	---	---	24	66	470	308	---
37,086	15,282	5,649	6,131	5,266	4,681	103	9,657	42,649	63,530	50,071	20,893	2,523	6,396	11,130	2,149	966
478	---	278	---	---	---	---	---	---	---	---	---	49	180	228	52	60
158,637	95,861	320,285	428,943	375,058	413,508	381,288	3,131	18,717	21,569	31,147	33,264	3,125	1,584	1,437	1,458	1,928
---	---	---	---	---	---	---	---	---	---	782	---	347	996	439	292	---
7,599	3,973	41,709	52,225	37,745	39,398	25,542	2,917	7,619	11,057	6,015	3,008	149	60	82	82	162
119,343	104,538				441,900	387,075				332,992	436,160				3,600	1,640
4,358	---	123	122	123	328	---	---	---	---	---	---	69	28	100	57	---
4,872	6,770	77	---	198	322	161	565	118	1,908	693	637	---	41	311	219	52
503	1,166	---	---	---	---	---	---	---	---	---	---	---	---	50	---	21
54,130	62,921	59,150	80,808	88,077	83,861	73,650	335	408	1,700	4,068	6,931	145	8	66	351	287
---	---	---	---	---	---	---	---	---	---	---	---	---	25	135	---	---
161,423	110,968	431,159	705,781	613,299	536,929	499,447	31,434	100,716	90,148	75,418	50,701	276	165	466	143	209
668,133	781,767				2,273,325	2,641,425				645,860	816,828				41,780	42,760
492	---	---	---	11	33	---	---	455	1,211	188	---	174	64	69	525	---
94	953	---	---	---	---	---	---	177	---	---	263	18	52	37	18	273
186	40	---	---	---	---	---	265	---	---	---	---	2	3	32	91	---
151	75	---	---	---	---	---	610	246	---	---	---	---	7	---	---	---
96,196	71,029	397,290	519,671	435,761	549,627	547,604	47,193	99,450	103,474	118,803	86,803	23,065	38,177	33,412	35,630	37,622
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STATES	MARKETS	CATTLE AND CALVES					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
Indiana	Chicago				112,329	101,304				469,350	413,025				388,204	331,4
	Kansas City	---	---	16	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	5	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	86	98	185	168	1,004	---	932	5,866	5,592	574	142	664	2,292	1,388	-
	St. Paul	---	---	2	---	---	---	---	---	---	---	---	---	---	---	-
Wisconsin	Chicago				224,486	241,985				966,825	1,067,925				764,024	858,4
	Kansas City	101	357	24	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	6	---	---	44	40	---	---	---	---	---	---	---	74	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	81	34	60	269	396	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	10,253	24,526	18,584	21,884	20,505	25,775	55,727	60,505	55,636	52,215	9,508	31,477	29,090	32,557	31,5
Michigan	Chicago				12,054	7,707				91,125	55,500				113,520	57,9
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Arkansas	Chicago				147	---				---	---				---	-
	Kansas City	590	1,113	2,082	---	---	1,357	5,259	7,709	---	---	601	714	2,561	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	132	---	---	---	---	---	-
	St. Louis	14,846	34,382	25,045	41,419	30,055	28,751	71,525	52,815	33,815	135,793	4,578	15,598	15,395	21,765	12,5
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Indian Terr.	Chicago				6,846	5,061				---	---				3,096	2,0
	Kansas City	95,473	115,184	123,716	203,421	149,635	31,047	33,913	45,579	60,240	129,800	1,620	4,550	953	2,960	3,0
	Omaha	---	---	---	197	36	---	---	---	---	---	---	---	---	4,075	-
	St. Joseph	12,049	28,718	32,338	42,446	28,575	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	267	190	3,009	---	---	---	---	-
	St. Louis	62,287	144,869	242,418	270,025	149,650	10,335	23,110	12,087	18,777	40,804	238	1,368	801	1,096	1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Oklahoma	Chicago				1,722	8,652				3,525	1,875				---	1,5
	Kansas City	89,263	170,598	202,698	182,441	108,900	54,047	59,979	68,320	135,675	259,200	31,905	11,937	5,790	15,382	20,7
	Omaha	---	---	52	646	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	13,648	34,476	30,446	18,967	9,001	2,593	10,078	10,888	12,300	25,725	709	525	2,650	1,190	3,0
	Sioux City	---	---	---	784	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	15,854	45,643	30,369	14,778	19,044	320	6,012	2,887	4,698	28,947	---	---	---	172	4
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Texas	Chicago				73,794	52,941				300	---				4,128	2,7
	Kansas City	86,048	169,285	268,558	313,729	183,281	896	1,449	298	5,795	15,400	62,058	72,754	109,953	106,054	55,5
	Omaha	7,768	13,101	20,566	9,771	9,881	---	---	---	---	---	---	---	---	1,357	-
	St. Joseph	6,436	51,824	67,771	33,772	13,743	---	---	2,637	2,296	2,268	8,968	20,836	76,507	20,578	38,3
	Sioux City	30,068	46,970	51,096	21,020	325	---	---	---	---	---	---	---	---	---	-
	St. Louis	217,302	282,745	363,832	389,414	228,622	317	457	1,172	8,805	25,722	48,963	75,496	65,384	58,924	61,7
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Colorado	Chicago				3,759	3,843				---	---				84,108	218,4
	Kansas City	14,516	51,185	58,822	96,713	35,878	445	565	775	867	---	235,901	165,198	171,552	224,182	295,8
	Omaha	17,477	42,108	57,044	94,502	45,130	---	---	342	527	---	186,913	80,826	77,175	110,834	162,8
	St. Joseph	4,852	18,734	30,103	38,826	9,321	---	---	---	---	567	338,061	217,273	154,026	209,247	201,4
	Sioux City	1,513	---	---	844	1,250	---	---	---	---	---	---	---	---	282	1,0
	St. Louis	144	586	483	2,220	198	---	---	---	---	---	39,499	23,019	2,569	12,036	18,8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-

		HOGS					SHEEP					HORSES AND MULES				
1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
18,329	101,304				469,350	413,025				388,204	331,444				5,480	4,860
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165	1,004	---	932	5,856	5,592	574	142	664	2,292	1,388	---	969	1,366	1,622	1,061	2,089
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4,486	241,983				966,825	1,067,925				764,024	858,452				7,140	6,060
---	---	---	---	---	---	---	---	---	74	---	---	27	558	28	---	---
44	40	---	---	---	---	---	---	---	---	---	---	---	---	---	1	10
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269	396	---	---	---	---	---	---	---	---	---	---	4	---	---	---	---
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1,884	20,505	25,775	55,727	60,505	55,636	52,215	9,508	31,477	29,090	32,557	31,684	17	5	78	78	51
2,054	7,707				91,125	55,500				118,520	57,964				760	1,140
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147	---				---	---				---	---				---	---
---	---	1,357	5,259	7,709	---	---	601	714	2,561	---	---	219	319	770	---	---
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---	---	---	---	---	132	---	---	---	---	---	---	---	---	---	---	---
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4,419	30,055	28,751	71,525	52,815	33,815	133,793	4,578	15,598	15,395	21,765	12,382	280	856	1,132	1,079	1,163
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2,846	5,061				---	---				3,096	2,064				20	20
2,421	149,635	31,047	33,913	45,579	60,240	129,800	1,620	4,550	953	2,960	3,000	353	680	889	801	2,400
197	36	---	---	---	---	---	---	---	---	4,075	---	---	---	---	---	---
2,446	28,575	---	---	267	190	3,009	---	---	---	---	---	---	---	---	---	---
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2,025	149,650	10,335	23,110	12,087	18,777	40,804	238	1,368	801	1,096	103	178	602	901	443	457
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2,722	8,652				3,525	1,875				---	1,548				60	---
2,441	108,900	54,047	59,979	68,320	135,673	259,200	31,905	11,937	5,790	15,382	20,700	571	2,419	3,717	2,190	4,660
846	---	---	---	---	---	---	---	---	---	---	---	5	---	---	---	---
2,857	9,001	2,593	10,078	10,888	12,300	25,725	709	525	2,650	1,190	3,041	10	113	---	133	237
784	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
2,778	19,044	320	6,012	2,887	4,698	28,947	---	---	---	172	452	1,037	1,755	844	277	488
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2,794	52,941				300	---				4,128	2,752				400	---
2,729	153,281	896	1,449	298	5,795	15,400	62,058	72,754	109,953	106,054	55,800	120	428	1,713	1,382	2,000
2,771	9,881	---	---	---	---	---	---	---	---	1,357	---	---	85	539	53	19
2,772	13,743	---	---	2,637	2,296	2,268	8,968	20,836	76,507	20,578	38,290	40	747	465	61	2
2,820	325	---	---	---	---	---	---	---	---	---	---	142	966	1,407	24	---
2,414	228,622	317	457	1,172	8,805	35,722	48,963	75,496	65,384	58,924	61,732	790	1,399	2,293	1,164	1,030
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2,789	3,843				---	---				84,108	218,440				1,500	460
2,723	35,878	445	565	775	867	---	235,901	165,198	171,552	224,182	293,896	1,050	3,750	3,200	2,391	2,800
2,502	45,130	---	---	342	527	---	186,973	80,826	77,175	110,834	162,552	438	1,089	1,898	1,970	1,416
2,325	9,321	---	---	---	---	567	338,061	217,273	154,025	209,247	201,495	307	687	651	255	1,746
2,344	1,250	---	---	---	---	---	---	---	---	282	1,037	---	27	---	110	324
2,220	198	---	---	---	---	---	39,499	23,019	2,569	12,036	18,581	2,657	5,160	2,508	789	1,986
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STATES	MARKETS	CATTLE AND CALVES					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	1905	1904	1903	1902	1901
Wyoming	Chicago				38,325	20,286				---	---				120,572	116,6
	Kansas City	2,730	2,303	820	2,214	---	---	---	---	---	---	---	10,759	17,035	12,837	---
	Omaha	11,135	95,318	105,204	132,765	54,120	---	---	71	---	79	48,370	522,550	653,973	761,676	338,6
	St. Joseph	669	3,523	4,508	3,532	1,384	---	---	---	---	---	3,436	40,743	24,526	32,197	39,7
	Sioux City	3	453	569	603	625	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	4,015	2,265	2,245	4,1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	6,831	---	---	---
Idaho	Chicago				573	1,995				---	---				207,776	135,7
	Kansas City	3,006	372	1,213	1,836	---	---	---	---	---	---	7,519	21,426	72,542	38,708	---
	Omaha	5,490	18,790	9,034	18,321	7,915	79	72	---	481	---	84,688	337,741	318,069	247,642	203,1
	St. Joseph	1,163	462	299	317	342	---	---	---	---	---	34,132	214,246	121,267	114,709	72,9
	Sioux City	---	---	66	---	---	---	---	---	---	---	---	231	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	2,309	13,617	4,779	5,300	9,2
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	511	---	---	---
Utah	Chicago				---	1,365				---	---				1,108	
	Kansas City	1,624	991	838	2,269	---	---	---	---	72	---	4,416	185,015	181,718	246,429	91,0
	Omaha	1,572	2,736	807	9,213	1,663	---	---	---	239	---	9,480	49,142	60,839	56,974	44,2
	St. Joseph	466	425	---	---	321	---	---	---	---	---	608	55,238	11,602	29,825	26,6
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	1,145	5,812	2,989	---	1,1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Nevada	Chicago				---	---				---	---					
	Kansas City	1,168	---	---	68	---	---	---	---	---	---				5,504	
	Omaha	640	71	---	499	126	---	---	---	---	---	5,619	1,261	2,765	9,970	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	741	1,027	543	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	3,983	1,458	---	---	1,8
	St. Louis	59	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	3,432	532	---	---	
												---	---	---	---	
Oregon	Chicago				21	---				---	---					
	Kansas City	692	54	---	---	---	---	80	---	---	---				7,396	
	Omaha	1,445	1,030	---	1,074	72	---	---	---	---	---	---	312	4,920	3,202	
	St. Joseph	133	---	---	---	---	---	---	---	---	---	12,987	36,816	15,952	24,795	2,8
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	9,223	3,303	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	550	---	---	
												24,071	10,546	---	---	
Washington	Chicago				---	---				---	---					
	Kansas City	---	---	---	---	---	---	---	---	---	---				6,536	3,7
	Omaha	44	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	2,441	---	---	7,4
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
												19,169	3,545	43,280	---	
Montana	Chicago				132,006	58,590				300	150					
	Kansas City	1,035	144	25	1,773	---	---	---	---	---	---				326,456	168,9
	Omaha	3,394	11,246	8,562	22,220	2,159	---	---	---	---	---	1,972	5,600	4,706	1,291	
	St. Joseph	230	24	---	1,066	---	---	---	---	---	---	10,919	30,716	17,473	21,777	15,9
	Sioux City	---	721	131	---	---	---	---	---	---	---	4,566	5,815	---	1,097	2,1
	St. Louis	---	---	---	1,512	---	---	---	---	---	---	---	---	2,900	3,102	
	St. Paul	8,676	75,668	45,845	50,653	14,184	30	9	---	20	---	633	697	---	755	
												128,062	515,180	608,461	383,823	200,2
No. Dakota	Chicago				52,920	33,201				5,625	12,000				89,956	91,3
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	43	669	522	152	---	---	---	---	---	---	712	250	1,445	293	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	3,639	8,495	7,575	1,092	870	350	1,123	859	1,092	870	186	547	1,060	657	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	20,024	90,301	56,844	56,135	26,648	43,892	64,641	42,946	22,909	9,423	14,285	94,345	92,507	66,065	30,0

2

1919

HOGS							SHEEP					HORSES AND MULES				
1902	1901	7 Months 1905	1904	1903	1902	1901	1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
36,325	20,286				---	---				120,872	116,616				1,000	840
2,214	---	---	---	---	---	---	---	10,759	17,035	12,537	---	236	---	1,575	1,522	---
122,765	54,120	---	---	72	---	79	48,370	522,550	653,973	761,676	338,899	1,912	6,198	8,739	6,850	5,031
3,532	1,364	---	---	---	---	---	3,436	40,743	24,526	32,197	39,740	1,642	2,772	1,824	2,911	374
603	625	---	---	---	---	---	---	---	---	---	---	628	180	1,660	2,325	1,458
---	---	---	---	---	---	---	---	4,015	2,265	2,245	4,172	1,637	3,820	4,638	4,417	884
---	---	---	---	---	---	---	---	6,831	---	---	---	---	---	23	---	---
273	1,995				---	---				207,776	135,708				80	260
1,836	---	---	---	---	---	---	7,519	21,426	72,542	38,708	---	468	931	589	1,563	---
18,321	7,915	79	72	---	431	---	84,688	337,741	312,069	247,642	203,171	4,045	6,849	4,243	4,457	3,225
317	342	---	---	---	---	---	34,132	214,246	121,267	114,709	72,989	464	249	252	1,696	2,692
---	---	---	---	---	---	---	---	231	---	---	---	27	254	667	1,504	1,620
---	---	---	---	---	---	---	2,309	13,617	4,779	5,300	9,204	1,181	729	1,305	1,752	3,425
---	---	---	---	---	---	---	---	511	---	---	---	788	35	---	---	---
---	1,365				---	---				1,108	94,256				120	560
2,269	---	---	---	---	72	---	4,416	185,015	181,518	246,429	91,000	52	423	793	846	3,621
9,213	1,663	---	---	---	239	---	9,480	49,142	60,839	56,974	44,221	396	3,599	6,583	7,226	2,253
---	321	---	---	---	---	---	608	55,238	11,602	29,825	26,651	26	441	830	22	399
---	---	---	---	---	---	---	---	---	---	---	---	---	29	215	2,516	891
---	---	---	---	---	---	---	1,145	5,812	2,989	---	1,100	1,492	3,441	2,310	213	851
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
---	---				---	---				5,504	---				20	80
68	---	---	---	---	---	---	5,619	1,261	2,765	9,970	---	166	159	99	538	---
499	126	---	---	---	---	---	741	1,027	543	---	---	2,014	1,733	1,701	338	841
---	---	---	---	---	---	---	3,983	1,458	---	---	1,801	---	---	329	---	1,028
---	---	---	---	---	---	---	---	---	---	---	---	378	2	336	2,268	---
---	---	---	---	---	---	---	3,432	532	---	---	---	1,311	1,073	126	302	679
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
21	---				---	---				7,396	---				---	---
---	---	---	80	---	---	---	---	312	4,920	3,202	---	207	437	670	698	---
1,074	72	---	---	---	---	---	12,987	36,816	15,952	24,795	2,803	974	4,533	4,062	5,139	4,255
---	---	---	---	---	---	---	---	9,223	3,303	---	---	242	123	803	1,153	75
---	---	---	---	---	---	---	---	---	---	---	---	93	---	20	584	293
---	---	---	---	---	---	---	---	550	---	---	---	1,216	4,549	2,948	2,363	320
---	---	---	---	---	---	---	24,071	10,546	---	---	---	23	---	1,025	---	---
---	---				---	---				6,536	3,784				40	---
---	---	---	---	---	---	---	---	---	---	---	---	282	86	---	---	---
---	---	---	---	---	---	---	---	2,441	---	---	7,446	---	767	63	30	156
---	---	---	---	---	---	---	---	---	---	---	---	329	24	---	---	---
---	---	---	---	---	---	---	---	---	---	---	---	42	69	1,250	1,340	702
---	---	---	---	---	---	---	---	---	---	---	---	368	1,005	---	---	48
---	---	---	---	---	---	---	19,169	8,545	43,280	---	---	---	101	---	---	---
132,006	58,590				300	150				326,456	168,904				3,180	1,560
1,773	---	---	---	---	---	---	1,972	5,600	4,706	1,291	---	479	769	888	766	---
22,220	2,159	---	---	---	---	---	10,919	30,716	17,473	21,777	15,976	1,029	1,660	1,775	2,308	5,288
1,066	---	---	---	---	---	---	4,566	5,815	---	1,097	2,109	1,905	4,653	1,626	1,025	3,358
---	---	---	---	---	---	---	---	---	2,903	3,102	---	138	187	2,049	2,760	6,601
1,812	---	---	---	---	---	---	633	697	---	755	---	2,597	6,845	3,438	3,033	2,021
50,653	14,184	30	9	---	20	---	128,062	515,180	608,461	383,823	200,210	1,042	5,413	4,875	5,746	10,697
52,920	33,201				5,625	12,000				89,956	91,330				600	560
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	53	---
152	---	---	---	---	---	---	712	250	1,445	293	---	23	52	---	---	270
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
1,092	870	350	1,123	859	1,092	870	186	547	1,060	657	---	111	56	9	594	1,411
---	---	---	---	---	---	---	---	---	---	---	---	1	---	97	---	270
56,135	26,648	43,892	64,641	42,946	22,909	9,423	14,285	94,345	92,507	66,065	30,068	111	538	500	747	1,610

STATES	MARKETS	CATTLE AND CALVES.					HOGS.					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	190
Arizona	Chicago				---	---				---	---				516	-
	Kansas City	108	44	328	---	---	---	---	---	---	---	97,979	2,644	53,623	---	14,8
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St Joseph	---	---	---	---	---	---	---	---	---	---	24,189	1,393	6,754	961	7,1
	Sioux City	6,246	481	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	1,1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
New Mexico	Chicago				1,512	---				450	---				1,720	-
	Kansas City	1,705	27,490	31,931	49,676	17,600	4,201	---	297	1,300	---	22,481	18,997	103,180	62,232	40,0
	Omaha	11,864	2,162	999	1,398	96	---	---	---	---	---	1,122	---	1,467	3,474	-
	St. Joseph	113	6,641	11,404	7,171	221	---	---	68	583	---	8,640	3,025	10,326	17,466	6,1
	Sioux City	13,652	2,595	12,745	5,616	715	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	299	---	---	---	---	---	---	---	644	4,562	4,980	2,480	3,6
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Kentucky	Chicago				9,429	---				6,375	---				37,324	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	1,547	3,130	5,137	6,178	5,143	18,772	45,511	13,656	31,887	32,369	7,346	13,656	15,383	15,079	12,8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Tennessee	Chicago				819	---				---	---				26,141	-
	Kansas City	---	---	167	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	4,429	6,781	7,532	14,412	11,697	8,723	30,829	52,726	15,953	21,177	18,879	27,969	19,942	17,226	3,8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Louisiana	Chicago				---	---				---	---				---	-
	Kansas City	---	59	685	---	---	---	---	---	---	---	761	256	1	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	1,283	2,312	5,907	14,745	2,599	---	---	30	44	53	---	117	---	160	4
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Mississippi	Chicago				42	---				---	---				---	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	1,606	2,703	6,145	10,738	3,808	---	89	461	259	257	152	438	784	445	8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
California	Chicago				---	---				---	---				---	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	2,368	887	762	---	-
	Omaha	1,140	---	---	---	---	---	---	---	---	---	6,773	---	4,166	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
New Hampshire	Chicago				---	---				---	---				---	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-

1020

1405d

HOGS.							SHEEP					HORSES AND MULES.				
1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
---	---				---	---				510	---				---	---
---	---	---	---	---	---	---	97,979	2,644	53,623	---	14,800	186	35	966	---	---
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
---	---	---	---	---	---	---	24,189	1,393	6,784	961	7,118	---	---	---	---	---
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1,512	---				430	---				1,720	---				---	60
69,676	17,600	4,201	---	497	1,300	---	22,481	18,997	103,180	62,232	40,000	404	1,573	1,121	1,249	---
1,398	96	---	---	---	---	---	1,122	---	1,467	3,474	---	195	---	---	490	---
7,171	221	---	---	68	583	---	8,640	3,025	10,326	17,466	6,161	---	305	140	53	---
5,516	715	---	---	---	---	---	---	---	---	---	---	29	82	531	---	---
---	---	---	---	---	---	---	644	4,562	4,980	2,480	3,514	107	381	313	124	695
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
9,429	---				6,375	---				37,324	---				540	1,380
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6,178	5,143	18,772	45,511	13,656	31,887	32,369	7,346	13,656	15,383	15,079	12,800	109	150	293	1,302	673
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819	---				---	---				26,141	---				40	---
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14,412	11,697	8,723	30,829	52,726	15,983	21,177	18,879	27,969	19,942	17,226	3,326	70	415	582	1,796	748
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---	---	---	---	---	---	---	761	256	1	---	---	---	4	63	---	---
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14,745	2,599	---	---	30	44	53	---	117	---	160	474	45	48	47	42	---
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42	---				---	---				---	---				---	---
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10,738	3,808	---	89	461	259	257	152	438	784	445	591	37	1	37	---	---
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STATES.	MARKETS	CATTLE AND CALVES.					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	19
South Carolina	Chicago	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
Alabama	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	160	583	---	---	---	---	120	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	86	189	---	
Georgia	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	3,149	---	---	
New Jersey	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
New York	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
Ohio	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	30	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	469	---	---	
Pennsylvania	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
West Virginia	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	

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CALVES.			HOGS					SHEEP					HORSES AND MULES.				
OS	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
						1											
583					120				85	189				31	240		
									3,149				28	817	28		
													6		8		
													26		12		
									469				61	218	165		
													189	113	75		
														5			
													12				

STATES	MARKETS.	CATTLE AND CALVES.					HOGS.					SHEEP			
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902
Massachusetts	Chicago				---	---				---	---				---
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Canada	Chicago				---	---				---	---				---
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Omaha	---	---	13	---	---	---	---	---	---	---	---	---	---	---
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Paul	---	520	132	---	---	---	---	---	---	---	295	---	---	---
Mexico	Chicago				---	---				---	---				---
	Kansas City	---	692	---	---	---	---	---	---	---	---				---
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	68	---	---	---	---	---	---	---	---	---	---	---
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Driven in	Chicago				6,244	6,387				3,510	3,910				644
	Kansas City		18,876	15,392	22,807	25,972		38,081	31,609	37,565	51,424		15,129	16,645	15,959
	Omaha	9,904	12,604	11,847	13,775	14,337	27,040	34,474	32,547	36,829	39,263	12,666	44,334	46,268	32,315
	St. Joseph		23,393	33,755				38,040	22,519				11,049	13,917	
	Sioux City		9,776	12,397	12,229	17,474		13,053	11,522	15,489	24,570		2,127	643	1,578
	St. Louis		22,076	11,575				18,390	10,997				2,502	3,945	
	St. Paul	1,016	8,339				---	9,306				1,021	3,015		
Totals *	Chicago	2,060,445	3,520,684	3,704,299	3,193,306	3,213,220	4,676,256	7,238,746	7,325,923	7,895,238	8,290,494	2,316,112	4,504,630	4,582,760	4,515,716
@	Kansas City	970,056	2,163,471	2,137,118	2,279,160	2,126,575	1,477,298	2,227,170	1,969,381	2,279,337	3,716,404	738,974	1,004,099	1,151,730	1,154,084
∂	Omaha	493,172	944,192	1,071,177	1,010,815	818,008	1,521,417	2,299,627	2,231,067	2,247,428	2,414,053	849,122	1,754,365	1,963,763	1,742,539
/	St. Joseph	252,131	587,261	624,974	517,294	439,293	1,163,929	1,656,849	1,700,564	1,697,731	2,105,209	631,481	794,379	599,189	560,653
?	Sioux City	242,261	331,293	379,466	392,606	290,055	824,106	1,113,177	1,007,900	992,273	935,394	11,024	28,464	41,744	59,697
#	St. Louis	534,596	1,074,126	1,139,749	1,112,942	892,270	1,150,375	1,954,902	1,568,038	1,329,819	1,924,206	392,303	687,896	528,089	523,201
"	St. Paul	164,407	388,633	302,338	306,066	190,290	546,243	881,635	759,542	667,526	616,796	234,664	771,576	875,215	602,340

* Included in Receipts from Illinois
@ " " " " Missouri and Kansas
∂ " " " " Nebraska and Iowa
/ " " " " Missouri and Kansas
? " " " " Iowa and Nebraska
" " " " Missouri and Illinois
" " " " " Minnesota

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E AND CALVES.			HOGS.					SHEEP					HORSES AND MULES.				
1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
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13	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
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132	---	---	---	---	---	---	---	295	---	---	---	---	---	---	---	---	---
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69	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
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	6,344	6,387				3,510	3,910				644	131				545	1,130
15,392	22,807	25,972		38,081	31,609	37,565	51,484		15,129	16,645	15,959	19,243		459	619	2,572	3,780
11,847	13,775	14,337	27,040	34,474	32,547	36,829	39,263	12,666	44,334	46,229	22,315	31,456	220	180	505	251	1,236
33,755				38,040	22,519				11,049	13,917				293	406			
12,397	12,229	17,474		13,053	11,522	15,489	24,570		2,127	643	1,578	5,724		107	145	735	477
11,575				18,390	10,997				2,502	3,945				13,168	12,112		
			---	9,306				1,021	3,015				21	9			
3,704,299	3,193,306	3,213,220	4,676,256	7,238,746	7,325,923	7,895,238	8,290,494	2,316,112	4,504,630	4,582,760	4,515,716	4,044,095	83,980	105,549	100,603	102,100	109,353
3,137,112	2,279,166	2,126,575	1,477,298	2,227,170	1,969,381	2,279,337	3,716,404	738,974	1,004,099	1,151,730	1,184,084	980,078	33,094	67,552	67,274	74,272	92,877
1,071,177	1,010,815	818,008	1,521,417	2,299,627	2,231,067	2,247,428	2,414,053	849,122	1,754,365	1,863,763	1,742,539	1,314,841	20,893	46,845	52,829	42,079	36,391
624,974	517,294	439,293	1,163,929	1,656,849	1,700,564	1,697,731	2,105,209	631,481	794,379	599,189	560,653	525,933	16,433	28,704	20,483	19,909	22,521
379,466	392,606	290,055	824,106	1,113,177	1,007,900	992,273	935,394	11,024	28,454	41,744	59,697	61,206	7,636	4,185	12,044	18,416	17,887
1,139,749	1,112,942	892,270	1,160,375	1,954,902	1,568,038	1,329,819	1,924,206	392,383	687,896	528,089	523,201	520,313	86,518	181,341	128,615	109,295	128,880
302,338	306,066	190,290	546,243	881,635	759,842	667,526	616,796	234,664	771,576	875,215	602,340	332,367	2,787	6,438	7,697	8,162	15,128

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YEAR 1901. 1408g

	Cattle & Calves	Hogs	Sheep	H.A.M.
Chicago Receipts	3,215,220	8,290,494	4,044,095	109,353
From Illinois	781,767	2,641,425	816,828	42,760
% of Total	24.33	31.86	20.20	39.19
Chicago Receipts	3,213,220	8,290,494	4,044,095	109,353
From Iowa	1,056,656	3,854,775	999,664	40,220
% of Total	32.88	46.50	24.72	36.77
Kansas City Receipts	2,126,575	3,716,404	980,078	92,877
From Kansas	1,149,273	2,046,864	264,700	37,500
% of Total	54.04	55.08	27.01	40.38
Kansas City Receipts	2,126,575	3,716,404	980,078	92,877
From Missouri	362,698	1,117,508	138,600	21,500
% of Total	17.06	30.07	14.14	23.15
Omaha Receipts	818,008	2,414,052	1,314,841	36,391
From Nebraska	514,888	1,598,438	468,136	10,034
% of Total	62.94	66.21	35.60	27.57
Omaha Receipts	818,008	2,414,052	1,314,841	36,391
From Iowa	109,581	806,312	31,587	1,774
% of Total	13.40	33.40	2.40	4.88
St.Joseph Receipts	439.293	2,105,209	525,933	22,581
From Nebraska	60,977	724,424	35,348	5,715
% of Total	13.88	34.41	6.70	25.37
St.Joseph Receipts	439,293	2,105,209	525,933	22,581
From Kansas	112,621	400,626	28,765	2,259
% of Total	25.64	19.03	5.47	10.00

Kenyons' Exhibit "B"
Vol 12, pp 1408

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14084

Kenyon's Exhibit C. Omaha.

RECEIPTS OF LIVE STOCK FROM IOWA.

Year Ending December 31, 1904-1903.

Railroad	Year	Cattle	Hogs	Sheep.
C M & St P	1904	16309	76912	2292.
	1903	14828	110351	4452
Wabash	1904	4974	20989	3529
	1903	7043	25850	2384
Union Pacific	1904	186	296	2251
	1903	230	502	3429
C & N W	1904	15080	88106	4635
"	1903	23174	135272	5362
C St P M & O	1904	627	114	127
"	1903	791	75	
C B & Q	1904	17336	68325	4382
"	1903	24016	93172	7859
K C St J & C B	1904	3063	6358	412
	1903	3262	7211	103
C R I & P	1904	18012	87921	7553
	1903	30176	125797	6335
Illinois Central	1904	8461	34300	2167
"	1903	11324	34898	4129
Chicago Gt Western	1904	8483	41064	1731
"	1903	1649	11503	1748
Total	1904	92531	424385	29079
"	1903	126493	544631	35801
Increase				
Decrease.		33962	120246	6722

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1408i

Kenyon's Exhibit D

PACKERS' PURCHASES AND DIRECT CONSIGNMENTS.
YEAR 1904-1903.

	Year	Cattle	Hogs	Sheep
Omaha	1904	95103	273451	96106
	1903	111388	264576	100335
Swift	1904	187885	463914	352381
	1903	208590	441631	361456
Cudahy	1904	182249	544576	242747
	1903	203757	525561	211087
Armour	1904	165531	574617	299711
	1903	178323	544257	270760
Total	1904	630768	1856758	990947
	1903	702058	1776025	963638

CONSIGNED DIRECT

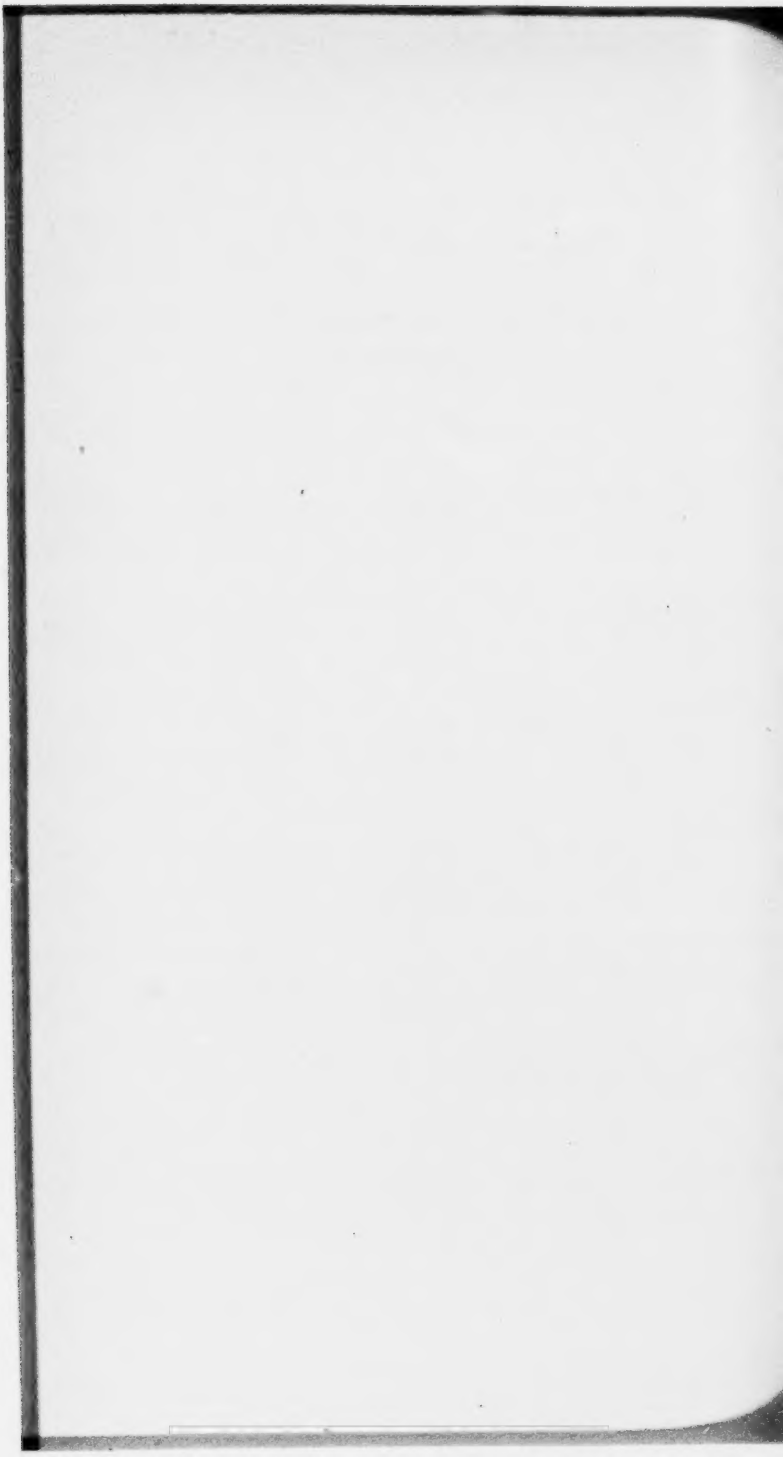
Omaha	K C	1904	1616		1101
		1903	1256		2658
	St Joe	1904	64	----	2990
		1903	2692	814	557
Swift	K C	1904	1776		2882
			191		2411
	St Joe	1904	1161		2841
			228		495
	Country	1904	1040	1534	
			3747	877	
Cudahy	K C	1904	10461	---	1853
		1903	12817	4274	13066
	St Joe	1904	---		
			36		
	Country	1904	1	---	103
		1903	1493	1269	4166
	Sioux Cy	1904	450	14995	338
		1903	----	14719	---
	Denver	1904	1230		205
		1903	---		---
	Ft Worth	1904	1080		
		1903			
Armour	K C	1904	477		1056
		1903	920		2154
	Sioux Cy	1904	3618	249377	---
		1903	16578	380579	90
	Country	1904		---	
		1903		952	
	Denver	1904	1398		
		1903	---		
Total		1904	24372	265906	13369
		1903	39988	403484	25597

Kenyon's Exhibit E.

14089.

LIVE STOCK CONSUMED BY VARIOUS PACKERS AT VARIOUS MARKETS.

	Cattle & Calves	Hogs	Sheep
CHICAGO			
Seven Months 1905	1268588	3319761	1841972
Year 1904	2175936	5612724	3142360
1903	2408530	6088369	3582651
1902	2256621	7142440	3683988
KANSAS CITY			
Seven Months 1905	605084	1442011	584187
Year 1904	1111284	2083020	731259
1903	1126458	1891708	775989
1902	1205599	2246303	724773
SOUTH OMAHA			
Seven months 1905	360524	1395017	539833
Year 1904	642277	2087605	815421
1903	735158	2177981	881359
1902	610281	2075743	815442
ST JOSEPH			
Seven months 1905	182279	1127610	481029
Year 1904	430298	1562340	509006
1903	434484	1577860	442717
1902	393213	1606055	419664
SIOUX CITY			
Seven months 1905	77555	639433	6756
Year 1904	71599	500008	6199
1903	73073	467351	16973
1902	91406	467351	16973
ST LOUIS			
Seven months 1905			
Year 1904			
1903			
1902			
ST PAUL			
Seven months 1905	61582	523405	95629
Year 1904	111823	810151	174600
1903			
1902			



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1408k

Kenyon's Exhibit F.

RECEIPTS AND DISPOSITION OF LIVE STOCK AT SOUTH OMAHA

Jan. 1st to Dec. 31, 1904-1903

	Year	Cattle	Hogs	Sheep
Sold to Packers	1904	630768	1856758	990947
	1903	702058	1776025	965162
Consigned Direct to Packers	1904	24372	265906	13369
	1903	39988	403484	25597
Forwarded, First Hands	1904	9816	821	102704
	1903	4510	103	79259
Forwarded, Not on Market	1904	25013	----	8837
	1903	35276	6	28821
Sold to Speculators, Feeders & Shippers	1904	254223	176142	638508
	1903	289345	51449	764924
Total Disposition	1904	944192	2299627	1754365
	1903	1071177	2231067	1863763
Total Receipts	1904	944192	2299627	1754365
	1903	1071177	2231067	1863763

Yours truly

General Manager.

W A P 35

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Kenyon's Exhibit G. 1408

FEEDER SHIPMENTS, VARIOUS MARKETS.

Jan. 1st to July 31, 1905-1904.

	Year	Omaha	Denver	Sioux Cy	Kansas Cy.
Nebraska	1905	42972	22589	26299	4889
	1904	36105	14092	15943	9618
Iowa	1905	42049	1076	41380	22374
	1904	36525	742	30646	26461
Kansas	1905	396	3613	----	89350
	1904	748	1164	----	77456
Missouri	1905	2842	289	175	87388
	1904	3486	27	121	106249
Illinois	1905	3184	1525	303	38518
	1904	3370	---	43	35836
South Dakota	1905	16155	21239	52393	----
	1904	4242	28338	41826	----
Colorado	1905	112	17503	---	----
		---	13891	---	---
Wyoming	1905	243	26679	---	---
	1904	239	31186	---	---
Other states	1905	3679	9402	14508	5612
	1904	7697	22135	17755	7529
Total	1905	111632	103915	135058	248131
	1904	92412	111575	105334	263149

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Kenyon's Exhibit Ga.

1408m

FEEDER SHIPMENTS OF VARIOUS MARKETS.

Year ending December 31,
1902-1901

Destination	Year	Omaha	Sioux City	Kansas City
Nebraska	1902	160298	41786	16789
	1901	115920	42249	31160
Iowa	1902	137841	81920	91027
	1901	76405	50020	95603
Kansas	1902	716		209497
	1901	1142	30	195167
Missouri	1902	16921	1549	307918
	1901	6224	343	164863
Illinois	1902	18225	861	122287
	1901	5894	203	55508
So Dakota	1902	15951	90850	
	1901	24100	60752	
Colorado	1902	2662		
	1901	4026	156	
Wyoming	1902	1485	107	
	1901	6112	180	
Other states	1902	11615	37078	46615
	1901	11165	16818	112461
Total	1902	365714	254151	794133
	1901	250988	170751	654752

Youts truly

General Manager.

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1408m

FEEDER SHIPMENTS, VARIOUS MARKETS.

Jan. 1, to Dec. 31, 1904-1903.

	Year	Omaha	Denver	Sioux Cy	Kansas City
Nebraska	1904	130,847	29,253	36,157	23,987
	1903	153,666	25,917	37,920	16,302
Iowa	1904	91,566	2,372	67,018	62,689
	1903	102,504	393	75,070	58,814
Kansas	1904	1,382	1,485		219,389
	1903	1,070	884		248,633
Missouri	1904	7,872	27	180	244,664
	1903	13,268	227	89	333,496
Illinois	1904	10,525	622	404	139,436
	1903	13,276	1,246	347	110,659
South Dakota	1904	4,618	35,809	57,085	
	1903	12,063	65,003	71,701	
Colorado	1904	26	21,776		
	1903	1,010	16,273		
Wyoming	1904	824	38,169	---	
	1903	1,081	44,176	314	
Others	1904	9,035	22,251	22,019	26,412
	1903	12,358	43,724	42,527	21,231
Total	1904	256,715	151,764	182,863	716,577
	1903	310,695	197,843	227,968	789,135

Kenyon's Exhibit H. Year 1904. 1408a

PERCENTAGE OF RECEIPTS PACKED AT VARIOUS MARKETS.

	CATTLE	HOGS	SHEEP
OMAHA			
Receipts	944192	2299627	1754365
Packed	642277	2087605	885421
Per cent Packed	68.02	90.78	50.47
KANSAS CITY			
Receipts	2163471	2227170	1004099
Packed	1111284	2083020	731259
Per cent Packed	51.36	93.52	72.82
CHICAGO			
Receipts	3526684	7238746	4504630
Packed	2176936	5612724	3142360
Per cent Packed	61.72	77.53	69.75
ST JOSEPH			
Receipts	587261	1656849	794379
Packed	430298	1562340	509006
Per cent Packed	73.27	94.29	64.07

1409 And thereupon the defendants, by their counsel, then and there announced that they rested their case.

And thereupon the complainant, the Interstate Commerce Commission, further to maintain the issues upon its part, introduced the following evidence in rebuttal:

H. L. WILSON, called as a witness on behalf of the Interstate Commerce Commission, in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. Where do you reside?
A. Osage, Iowa.
Q. What railroad is it on and how far is it from Chicago?
A. It is 340 miles from Chicago by the Illinois Central. I am not certain about the distance via the Chicago Great Western. We are on both lines.
Q. Is your place on the direct line from Missouri River to Chicago?
A. No, we are on the line from St. Paul to Chicago, on the Illinois Central.

The COURT:

Q. What roads are you on?
A. The Illinois Central and Chicago Great Western. We
1410 are on the line between St. Paul and Chicago on the Illinois Central.
Q. What is your business?
A. I am a farmer, feeder, shipper and an Editor.

Mr. COWAN:

Q. Are you acquainted with the live stock business in that locality?
A. Yes, sir, I think so.
Q. For how long have you been engaged in your present business, and to what extent are you acquainted with it?
A. I have been in the live stock business for 25 years or about that time.
Q. During the time you have been engaged in the business of—you have been engaged in the business of raising, feeding and shipping live stock?
A. Yes, sir.
Q. Do you raise all the live stock you feed, or buy them, and if you buy them where do you get them?
A. I buy them mostly. I feed a great many cattle and hogs and I also buy and ship.
Q. You will have to speak a little more distinctly.
A. I feed hogs and cattle and I also buy and ship without feeding.
Q. Do you buy any of those which you feed?
A. Yes, sir.
Q. Where do you buy them?
A. In the surrounding country mostly, sometimes in St. Paul.

1411 Q. To what markets do you ship the hogs and cattle?

A. I have shipped to nearly all the western markets and some eastern markets.

Q. What is the rate of freight on hogs and cattle from your place?

A. Our rate of freight is 24 cents on hogs and 23 cents on cattle.

Q. How long has it been so?

A. For a great many years, I don't know how long.

Q. Was it less at some previous time, and if so, when?

A. I don't think it was ever less than that.

The COURT:

Q. What County are you in,—what part of Iowa?

A. Mitchell County on the northern tier of counties.

Q. How far from Chicago or Sioux City?

A. 340 miles from Chicago. I am not certain about the distance to Sioux City, but about 160 miles, I think, or a little more than that. It is more than 160 miles.

Mr. COWAN:

Q. To what extent have you been shipping, frequently or infrequently?

A. I ship frequently a great many cars in a year.

Q. For the purpose of sale on the market?

A. Yes, sir.

Q. Do you consign to commission companies?

1412 A. When I ship to Chicago I consign to these commission men. I frequently sell hogs at Cedar Rapids or Waterloo and many other places.

Q. What is the method of doing that business?

A. At Cedar Rapids?

Q. Yes.

A. I usually sell in advance.

Q. By what method do you arrive at an agreement?

A. The Cedar Rapids packing house has certain grades that they pay certain prices for and another grade that they pay another price for. They have four grades and they have four different prices for them. When I sell a car of hogs to arrive at some future time, those hogs are graded and classified according to the quality of the hogs.

Q. How do you ascertain the price?

A. The price is named in—we are familiar with the prices in Cedar Rapids by wire every day if there is any change.

Q. Is there a market at Cedar Rapids that fixes the prices, or is it based on some other place?

A. Well, they base the market on Chicago.

Q. Is the Cedar Rapids price which is paid, the Chicago price or something less or greater, and to what extent is it less or greater?

A. It is usually about 15 or 20 per cent. below Chicago on certain grades.

Q. During what time of the year are the hogs bought for the Chicago market?

A. They buy at all times of the year.
1413 Q. You say it is usually 15 or 20 cents below the Chicago market?
A. That is the usual range in price.
Q. Is the price paid based on the Chicago market?
A. I think quite largely, yes. When Chicago is down they always go down.
Q. Who beds the cars for shipment?
A. Why, I always bed my own cars, or my men.
Q. What is the custom in Iowa, so far as you are acquainted with it, and what has it been with respect to the matter of bedding the cars?
A. The shippers bed the cars.
Q. Who furnishes the bedding?
A. The shippers.
Q. Can you state whether the railroads are at any expense in the matter of bedding cars from shipments from your part of the country where you are acquainted?
A. No, sir, not that I know of. I never saw any expense. They never furnish no bedding for us as far as our town is concerned.

The COURT:

Q. No sand?
A. Well, I will except one instance in that respect. About a year ago the Railroad company were running a gravel train past Osage up and down the road and there was a car that was damaged in some way, and it ran in the side track and was side tracked there. We asked the agent to unload the car and told him
1414 that we would use the gravel for bedding hog cars, and he did so, and that was the only exception that I know of.

Mr. COWAN:

Q. Now, in your experience out there at places aside from Osage, who furnishes the bedding?

Mr. DAWES: I object to that. It has not been shown that he has any experience at any other place.
The COURT: Find out whether he has had any experience.

Mr. COWAN:

Q. What observation have you had with respect to the matter of shipping cattle and hogs from other stations?
A. I have shipped live stock from 25 stations in Iowa.
Q. What are the principal ones?
A. Osage, Mitchell, St. Angus, Lyle, Orchard, Charles City, Little Cedar, Rice Falls, David, McIntyre, Elma, Pecora and Ossia. That is sufficient, I guess.
Q. After having answered that, state what is the custom about bedding the cars in the district where these stations are located, and where you are acquainted?
A. I have never seen an instance in all my career of 25 years wherein any one else bedded the car only the shipper, or some one for him.

Q. How is it with respect to the railroads having furnished the bedding?

1415 A. I never saw any bedding furnished only in this case that I mentioned.

Q. How many cars have you been shipping per year?

A. My shipments will run from 400 to 500 cars a year.

Q. Over what roads?

A. At the present time I am only operating on two roads, the Illinois Central and the Chicago Great Western, and not very extensively on either. I am not shipping much stock at the present time.

Q. Do they always furnish you cars which have been cleaned?

A. Not always, no.

Q. To what extent are the cars which are furnished you previously, cleaned, so that they are furnished to you already cleaned?

A. Well, probably half of the cars are fairly well cleaned and the other half *or*- not.

Q. Do you ever clean any of them?

A. Yes, sir.

Q. How many cars will a man clean in a day?

A. That depends upon the condition of the car.

The COURT: And the weather.

Mr. COWAN:

Q. Suppose it has been used for one trip?

A. For one trip?

Q. Yes.

A. He can clean a great many.

Q. About how many?

A. Well, 40.

Mr. SEVERANCE:

Q. One man?

A. Yes, sir.

Q. Summer or winter?

1416 A. Not frozen; if it was frozen he could not do that.

Mr. COWAN:

Q. Do they clean the cars in the winter when they are frozen?

A. I think not.

The COURT:

Q. What is your experience? What do you know about it?

A. I never undertook to throw out much frozen manure out of a car, if it was real well frozen.

Mr. COWAN:

Q. How much will the bedding weigh in a car which has been used simply for one trip?

A. How much will the bedding weigh?

Q. Yes. I mean the stuff that is in the car, that you clean out, if it has just been used for one trip?

A. Ordinarily from 500 to 1,000 pounds.

Q. You have been sitting here and have heard a number of statements made with respect to the very heavy weight of the bedding in the cars. How could heavy weight bedding occur in the cars? Would that occur on one trip, or would it have to be used over and over again?

A. Why, it should not occur on one trip. Ordinarily those cars with a large amount of manure are used for a year or two, as I understand it.

Mr. SEVERANCE:

Q. Do you mean that the manure has been in the car for a
1417 year or two?

A. That is what I said.

Mr. COWAN:

Q. How thick have you seen it in cars?

A. I have seen it a foot thick.

The COURT:

Q. Whose car was that?

A. Well, I could not tell, I do not recollect any special car.

Mr. SEVERANCE: They must belong to these private car lines. They have no friends.

The WITNESS: Well, as you mention, these private car lines, it often does occur that there is more manure in them than there is in the regular company cars. That is true.

Mr. COWAN:

Q. What is the average weight of the cattle you ship, per 36-foot car to Chicago?

A. I aim to get from 24,000 to 35,000 pounds.

Q. What is the weight of the hogs which you ship in the 36-foot cars?

A. About 17,500 to 17,800 pounds.

Q. In the course of your experience how much loss and damage have you collected, what claims have you put in for loss and damage?

Mr. SEVERANCE: I object to that, as immaterial.

The COURT: Well, lets see what he says.

Mr. SEVERANCE: What his particular experience has been——

1418 The WITNESS: I had a claim for a car of hogs lost once, or wrecked, a number of years ago. I got the reasonable value of the hogs.

Mr. COWAN:

Q. Do you sometimes miss the market that you ship for when you are shipping in?

A. Oh, yes, sometimes we are delayed.

Q. Do you put in claims for damages for every such shipment?

Mr. SEVERANCE: That is objected to, as entirely immaterial.

The COURT: I don't believe that we ought to go into that, Mr. Cowan. We would have to try every one of those cases. To make it valuable you would have to bring in everybody that ships on the road.

Mr. COWAN: I am not trying that particular claim. The reason I asked this question is this. Your Honor will remember that a number of gentlemen stated that every time they are late in getting in they were confronted with a claim for damages.

Mr. SEVERANCE: I think no one has so stated.

The COURT: They did not prove that any one of them were paid.

Mr. SEVERANCE: Oh, yes, they stated that, but they did not state that this man had ever made a claim.

Mr. COWAN: I think it is proper to show by actual ship-
1419 pers that it is seldom that claims are put in of that kind.

Mr. SEVERANCE: What would you establish by that, your Honor?

The COURT: Now, you wait. When you have got the Court with you, you had better not talk.

Mr. SEVERANCE: I saw the Court was thinking and I thought he was wavering.

The COURT: Don't you worry about that. Wise men change their minds. Others sometimes do not. The objection is sustained. Now, go ahead.

Mr. COWAN:

Q. What is the character of the stock yards at those various shipping points?

Mr. DAWES: What various shipping points?

Mr. COWAN: That he has already mentioned.

A. I could describe the condition of the stock yards at Osage or Little Cedar or David or Lyle. Those are the only points I have been at recently.

The COURT: Well, describe them.

A. Osage, the Illinois Central has a yard there with eight pens, and a scale and a receiving yard, and the Great Western have a stock yard with four covered pens and two open pens and a small receiving yard and a scale. Little Cedar has four pens and David has two pens. McIntyre has four pens, I think.

1420 Q. Did you look over the statement made by Mr. Daly giving the value of the yards and grounds of the various stock yards on the Illinois Central, introduced yesterday?

A. Yes, sir.

Q. Are you acquainted with the cost of lumber and labor and the value of construction of pens and fences and buildings and things of that kind in your locality?

A. Yes, sir, somewhat.

Q. What, in your opinion, is the value of the stock yards; you may mention some of them that were mentioned by Mr. Daly.

Mr. DAWES I object to that, unless he confines his opinion to the four yards that he says he knows something about.

Mr. SEVERANCE: I object. He has not shown himself qualified to give an opinion.

The COURT: Objection overruled.

Mr. SEVERANCE: May I ask him a few questions? I want to make an objection to his competency?

The COURT: I think not, you can cross-examine.

Mr. SEVERANCE: The testimony is not competent and I desire to ask a few questions to show that.

The COURT: No matter whether it is, it will be in.

Mr. DAWES: Does your Honor overrule my objection, also?

The COURT: Yes. He may answer.

1421 Mr. SEVERANCE: I would like an exception to the ruling of the court refusing to permit me to examine as to the competency of the witness.

To which ruling of the Court the defendants, and each of them, by their counsel, then and there duly excepted.

The COURT: Go ahead and answer.

A. The stock yard at Osage, the Illinois Central stock yard, is the best yard that I have described at the four stations. The reasonable value of the Illinois Central stock yard, in my opinion would be $1,500, including the scale. The reasonable value of the ground would be less, the ground that it occupies, would be less than $100.

Mr. LYNDE:

Q. How much does it occupy?

A. It occupies a space of ground about twice the space of this court room.

Q. How many acres?

A. I never measured it, but I estimate that $100 would be a strong price for it.

The Great Western stock yard at Osage is composed of four yards, and $600 would be a very good price for it, including the scales.

The Little Cedar Stock yards are somewhat smaller and their value would not exceed $400.

The David stock yards is somewhat smaller still, and their value would not exceed $350.

1422 The Lyle stock yards,—there are two stock yards there,—and the value would not exceed $400, including the scales.

Mr. COWAN:

Q. How is it at Orchard?

A. I haven't been at Orchard recently, but I understand that they made some improvement there since I have been there.

Q. In what does the expense consist in the maintainance of these yards at these various places?

Mr. SEVERANCE: I object to that, on the ground that the witness has not shown himself qualified.

The COURT: He has shown that he is a farmer and a shipper, and something else, and an Editor.

Mr. SEVERANCE: Well, being an Editor that might help some.

The COURT: Answer the question.

The WITNESS: Maintainance by the Railway company?

Mr. COWAN:

Q. Yes.

A. It consists in keeping clean where they are cleaned, and keeping them in repair where they repair them.

Q. Now, in your observation from shipping from these yards, you must see what is done in the way of repairs. What does it take to keep those stock pens in repair, what sort of work does it take, and what does it consist of?

Mr. SEVERANCE: The same objection.

The COURT: A man that is a farmer and a feeder and a shipper in that business all the time, knows something about stock
1423 yards.

Mr. DAWES: But not in repairing fences?

The COURT: I will let him answer.

(The question was then read.)

A. Every once in a while a board will be broken or a post may be broken, and when they get enough posts and boards broken so that they will not hold the stock, the railway company usually sends a man along and he repairs them, he puts in a board or he puts in the post.

Mr. COWAN:

Q. What would it take to keep them in repair per year, per annum?

Mr. DAWES: I object to that.

The COURT: Objection overruled.

Mr. DAWES Note an exception.

(To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.)

A. That would depend entirely on the circumstances. I could not state a figure.

Mr. COWAN:

Q. Well, would it be great or small?

Mr. DAWES: I object to that.

The COURT: Objection sustained.

Mr. COWAN:

Q. What will it cost to put in a post or put on a board?

1424 Mr. SEVERANCE: I object to that on the ground that the witness has not shown himself qualified to give an opinion.

The COURT:

Q. Did you ever nail any boards on?

A. I have your Honor, and put posts in, too.

Q. Do you know about the price of lumber and nails out there and labor?

A. Yes, I do.

Q. Have you had experience in building stock yards or repairing them?

A. I have.

Q. And buying and selling and building fences?

A. Yes, and I have bought and sold stock yards, too.

(The question was then read.)

A. A post will cost probably 20 cents or thereabouts, depending on the size of the post.

Mr. DAWES: You are not going to give the different sizes of the posts.

A. Posts are not of the same size unfortunately, no more than men are.

Mr. COWAN:

Q. What amount of labor does it take to put in a post or nail on a board?

Mr. SEVERANCE: I object to that on the same ground.

The COURT: Objection overruled.

A. Putting in a post requires digging a post hole and simply digging a hole and putting in a post and tamping it in there
1425 and nailing on the boards.

Mr. COWAN:

Q. What would be the outside figure for the maintenance of one of those stock yards for a year, so far as repairs to the yard are concerned?

Mr. SEVERANCE: The same objection.

The COURT: Objection overruled.

Mr. DAWES: The question is so indefinite that granting that this man is qualified to the most eminent degree as an expert, the question of Mr. Cowan is too vague. The stock yards vary according to his own estimate from $400.00 up to $1200.00. Can't we have a little more definite direction to the witness?

The COURT: The more indefinite it is the better it is for you.

Mr. DAWES: I think we are entitled to have testimony which is indefinite, excluded.

Mr. COWAN:

Q. Take the Osage yard, first.

A. The Osage stock yards has had little if any repairs of late years. The Osage stock yards is practically new, the greater portion of it is. There is some old lumber in it but it is lately built. There was an improvement made however in the Osage stock yards which cost some money.

Q. I am asking now about the cost of making the repairs
1426 on the stock yards aside from the matter of teaming?

A. There was also some work in the Osage stock yards on the well and wind-mill within the last year which might aggregate $25.00 or $50/00.

Q. What do you mean by "aggregate," putting in the well and the wind-mill?

A. No, repairing the pump and the water system that they have there.

Q. What I am trying to get at is what it amounts to per year aside from the matter of cleaning, to maintain these stock yards in the condition of repair for the transaction of the business, not adding to them but what it would cost for repair?

Mr. SEVERANCE: The same objection.

The COURT: Objection overruled.

A. When a stock yards is new it don't take anything to maintain it, practically nothing. When a stock yards gets old it takes lumber and posts to repair that yard.

Mr. LYNDE:

Q. Like anything else it wears out, doesn't it?

A. Yes, it wears out.

Mr. COWAN:

Q. How long does it take them to wear out?

A. Well, the Great Western stock yards at Osage, was built, I think 14 years ago, and it is there yet.

Q. What condition of repair is it in?

1427 The COURT:

Q. 14 years. What has been the amount of annual repairs?

Mr. SEVERANCE: I object to the Court's question on the same ground.

A. Well, in the last 14 years I would not think——

Mr. LYNDE: What do you know about it, not what you think.

A. I have to guess.

The COURT: He will answer my question first.

The WITNESS: I want to tell the court that I have to guess.

Mr. DAWES: I object to that then.

The COURT: Yes, if you have to guess.

The WITNESS: I would say $10.00 or $15.00 a year.

Mr. SEVERANCE: Your Honor admits the guess?

The COURT: Not exceeding $10.00 or $15.00 a year.

Mr. SEVERANCE: I thought your Honor told the witness he could not answer that.

The COURT: No, I did not.

Mr. SEVERANCE: I desire to object to the witness being allowed to give a guess, and I move to strike the guess out.

The WITNESS: I said "estimate" did I not?
The COURT: The motion to strike out is overruled.

Mr. COWAN:

Q. Take these other similar stock yards that you have men-
1428 tioned and name any one of them and state what the amount of repairs would amount to, per annum?
The COURT: If you know what it has amounted to?

Mr. COWAN:

Q. That is if you know what it has amounted to, state it. If you don't know what it has amounted to, make an estimate if you have an opinion as to what it would amount to.
Mr. LYNDE: Or a guess will do just as well.
The WITNESS: The repairs at Little Cedar have been small. I have not been there enough to be able to make a close estimate on that.
Mr. DAWES: But you know that they are small.
The WITNESS: Likewise at David the repairs have been small.
Mr. COWAN: Well, I am asking you for an estimate as to how much it would require.
The COURT: He don't seem to know and he don't seem to be inclined to try to tell, Mr. Cowan.
The WITNESS: It is not that I object to telling, but I really don't know.

Mr. COWAN:

Q. You have been looking at these yards and you have seen them and shipped from them?
A. I ship from those yards occasionally.
Q. Haven't you any idea what it takes to keep the stock
1429 yards in repair?

Mr. SEVERANCE: I object to the witness being cross examined any further by counsel.
The COURT: Objection sustained.

Mr. COWAN:

Q. Is the stock yards at Osage a more expensive yard than these other places you have mentioned?
A. Yes sir.
Q. Is it more expensive to keep in repair than others, on account of its size?
A. Yes sir.
Q. How long have you known the stock yards to last?

Mr. SEVERANCE: I object to that as immaterial in this case.

The COURT: Yes, in that form. I think that is a little indefinite.
Mr. COWAN: Stock yards in this particular locality.
The COURT: He has known this other one fourteen years.
Mr. COWAN: This man is acquainted with them and I am asking him now in respect to the yards that we have been talking about.

Q. How long do they last, Mr. Wilson?
A. One stock yard there has been there 20 years. That is the oldest stock yards that I know of.
Q. How long is it good for yet?
A. Well, I could not say.

1430 Mr. SEVERANCE: I would like to preserve an objection to this.
The COURT: Yes.
Mr. COWAN: What condition is it in?
A. Pretty fair condition.
Q. At what place is that stock yards?
A. That is at Osage.
Q. Now, how long had these other stock yards been in that you have mentioned?
A. The stock yards at Little Cedar and David and McIntyre, they were built the same time the Osage was on the Great Western railroad and those have been there 14 years.
Q. What condition are they in?
A. Pretty fair condition. Excuse me, the David stock yard was built since then, several years later.
Q. You have heard testimony here with respect to the matter of meat trains, and the speed of meat trains and trains carrying meat and packing house products and live stock. What in your experience and observation is the relative speed and time of the trains in which dressed meats and packing house products are carried and the trains in which the live stock are carried.

Mr. SEVERANCE: I would like to have that confined to some one road.

The COURT: That must be for the roads of the defendants.
1431 Mr. SEVERANCE: As to the road that I represent, Mr. Stickney stated that they were moved in the same train on the Great Western and consequently that question ought to be applied to some other road than that one.
The COURT: Well, we will see what he says about it.
Mr. COWAN: This witness may have seen the trains otherwise than Mr. Stickney sees them.
The COURT: It must be since this injunction. We will not go back of that. Since the spring of 1902 and it must be on the roads of some of these defendants. Now with that understanding you may answer the question.

Mr. COWAN:

Q. Put it since 1902 over the roads that you do business with, naming the roads in Iowa leading to Chicago.

Mr. SEVERANCE: I make the further objection that this witness has not shown himself possessed of any information in reference to packing house trains or dressed beef trains. He has not shipped any dressed meats and it would only be a casual observation of the trains running by.

The COURT:

Q. What experience have you had with both kinds of trains?
A. My experience has been limited in the last two years. I have had some complaint from my men.

Mr. LYNDE: Well, we don't care for that.

Mr. COWAN:

1432 Q. Do you ship live stock on these trains?
A. I ship on these trains, yes, but I have not been with the live stock but little in the last two years.
Q. You know when your live stock starts and when it get- in, do you not? What is your answer?

Mr. DAWES: I object. The court, I understood to exclude that question.
The COURT: He has asked him what experience he has had.

A. I have had very little experience.

The COURT: That don't qualify him very well.

Mr. COWAN:

Q. It is said here that the live stock shippers are satisfied with the rates of freight on their live stock and with the relation of the rates on packing house products and dressed meat.
A. Yes?
Q. What do you know about that, is that a fact or not?

Mr. DAWES: I object to that so far as——
The COURT: The objection is sustained except as to himself.
Mr. DAWES: I object to the particular inquiry as to himself. The testimony has been here that no complaints have been brought to the railroad companies. If this man can testify to a particular complaint on his part brought to the attention of the railroads, in reference to particular rates, why then I can see how that would be com-
1433 petent in rebuttal but unless the question is directed to that end, I object to it as incompetent.
Mr. COWAN: I would just like to call the Court's attention to a point that was made all through this case; it was testified to that the shippers in Iowa were perfectly satisfied with the rate.
The COURT: The evidence was that there had been no complaints.
Mr. COWAN: As to the other statement, if they will agree to strike that out of the record, the other statement, I won't ask the question.
The COURT: I will sustain the objection to this and pass on the other questions as they arise.
Mr. COWAN: I think if it is in the record, if your honor please, that these gentlemen have stated that the Iowa shippers are satisfied, certainly I ought to be able to have a chance to show that they are not.
The COURT: They claimed that there had been no complaints. If there have been complaints, why bring them in.
Mr. SHAVER: The object of the defendant in showing that there

have been no complaints was to show that the rates are satisfactory. They draw that inference.

Mr. DAWES: You can deny the fact, but not the inference by testimony.

The COURT: I think you had better show the complaints.

1434 Mr. COWAN:

Q. What do you know with respect to the matter of whether or not there have been complaints made with regard to rates and the relation of rates?

Mr. SEVERANCE: He should only be questioned with reference to the complaints made by himself. I object.

The COURT: I sustain your objection. Ask him what he knows.

The WITNESS: I have made complaints myself.

Mr. COWAN:

Q. How is that?

A. I have complained to our local agent and the traveling freight agent himself about the rates.

Q. That is about the amount of the rates?

A. Yes sir.

Q. Of what rates?

A. Of our road, the Illinois Central Railroad and the Great Western Railroad.

1435 Q. You have been paying these rates for a number of years and are acquainted with them?

A. Yes, sir.

Q. State in your opinion whether they are too high or too low?

Mr. SEVERANCE: I object to that, as incompetent. He is not qualified to give an opinion on that.

The COURT: It is too broad; the objection is sustained. He can make the comparison if you want him to between the two kinds of rates. He may state his opinion the same as the rest have.

Mr. COWAN:

Q. Take the rate on cattle which you pay from Osage and your other shipping points in the amounts you have named, 23½ cents to Chicago——

A. 23 cents on cattle.

Mr. DAWES:

Q. 24 cents on hogs?

A. 24 cents on hogs.

Mr. COWAN:

Q. What is your opinion in respect to that rate?

Mr. SEVERANCE: I object to that, as incompetent. This witness is not an expert on the question of rates. There is no foundation for his giving his opinion.

The COURT: We have taken the opinion of the other side, men

that were freight agents, and men that were superintendents of cars and all sorts of things.

1436 Mr. SEVERANCE: May I suggest to your Honor that this so-called superintendent of cars has been a traffic man and has been in the railway business for twenty years.

The COURT: Well, this man has been in this business 25 years.

Mr. SEVERANCE: No, this man never built a car, never ran a railroad in his life, and knows nothing about the cost of running a railroad or the costs of cars in which the traffic is transported.

The COURT: That is a question for you to argue.

Mr. SEVERANCE: Still, your Honor, it goes to the competency of the evidence.

The COURT: Objection overruled.

(The pending question was then read.)

A. I think it is too high.

The COURT:

Q. Now, why?

Mr. SEVERANCE: I preserve the same objection.

A. I compare the rate on cattle and hogs from Osage to Chicago with the rate on similar freight from Chicago to the east.

Mr. DAWES: What do you mean by "similar freight"?

A. Cattle or hogs from Chicago east to eastern points and compare it with the dressed beef from Missouri River points to

1437 Chicago, and it is entirely too high compared with the other.

Mr. COWAN:

Q. Have you made any inquiry to ascertain what rate you could get for dressed meat to ship from your place to Chicago?

A. I have.

Mr. SEVERANCE: I object to that, as immaterial.

Mr. COWAN:

Q. That is, have you made inquiry of the Railroad freight agent or of any representative of any one of these railroads?

Mr. SEVERANCE: I object to that, as immaterial.

The COURT: It is simply a question of whether he has ever made an inquiry.

Mr. COWAN: Yes.

The COURT: Objection overruled.

A. I have made inquiries, yes.

Mr. COWAN:

Q. Where?

Mr. SEVERANCE: The same objection.

Mr. COWAN:

Q. And of whom?

The COURT: The same ruling.

A. At Osage and Waterloo, both.

Mr. COWAN:

Q. Of whom did you make the inquiry?
A. Both the Illinois Central agent at Osage and the Great Western agent at Osage, and the Waterloo inquiry was made by the
1438 Illinois Central agent at Osage.
Q. For what purpose?
A. To ascertain the rates on meat; I thought of shipping some.
Q. In carloads or less than carloads?
A. Carload lots, yes, sir.
Q. What information did you get in regard to it?

Mr. SEVERANCE: The same objection. The published tariff is conclusive.

The COURT:

Q. When was it?
A. One year ago and this summer also, both years.

Mr. COWAN: It is material if they show a higher rate from there than they do to the Missouri River. The packer gets the lower rate. I want to ask him what they quoted the rate at.

The COURT: How will that help us to decide this question as to whether the rate of 20 cents is a discrimination against live stock?

Mr. COWAN: It is only the case in certain instances, when the shipper proposes to kill his stock, that rate is not given.

The COURT: The objection is sustained. I don't see how it affects the question.

Mr. COWAN: I desire to ask that question for another reason, that I desire to follow it with a question as to what reason the
1439 railroad agent gave for the higher rate on the dressed meat than the live stock.

Mr. SEVERANCE: You cannot hold these defendants for the remark made by some country agent.

The COURT: I cannot see now how it would do any good.

Mr. COWAN:

Q. What will the cattle dress out, do you know?
A. Cattle? They will dress about 48 to 62 or 63 per cent. meat.
Q. How much do hogs dress out?
A. A hog will dress out with his head on, about 80 per cent.

The COURT:

Q. How?
A. Eighty per cent.

Mr. COWAN:

Q. Has the live stock tonnage in your part of the country increased or not in the last few years?

A. It is constantly increasing, the live stock tonnage in the northern part of Iowa.

The COURT: I did not understand the answer.

A. It is constantly increasing, the live stock tonnage in the northern part of Iowa.

Q. Is that true of both cattle and hogs?

A. Yes, more probably in cattle than hogs, but not much more.

Q. You have been having plenty of hogs for a good while?

1440 A. Yes, sir.

Mr. COWAN:

Q. Do you ever bed with sand?

A. Yes.

Q. Where do you get it?

A. Well, I get it at the river if I don't happen to find some along the side track.

Q. You mean you haul it yourself?

A. Yes.

Q. Are you acquainted with the stock yards along the line of the Chicago Great Western through Iowa; and if not, between what points are you acquainted with the stock yards?

A. Well, I only know the stock yards on the Chicago Great Western, and outside of those I have named,—outside of those that I have named I only know them by going by them on the train, and that is not a very close knowledge.

Q. In the stock yards which you have named, are they somewhat similar or are they dissimilar, on the average, to the stock yards which are generally used by the railroads throughout the State?

Mr. SEVERANCE: That is objected to, as incompetent.

The COURT: Objection sustained.

Mr. COWAN:

Q. To the extent of your knowledge of the stock yards in the state, how do these that you have named compare with them?

Mr. SEVERANCE: The same objection.

The COURT: The same ruling. That is too indefinite.

1441 Mr. COWAN: What is the Court's ruling?

The COURT: His knowledge is a little too indefinite.

Mr. COWAN: Do you know whether stock cars are used in the shipment of other things than live stock in their movement westward?

A. Yes, sir, I know they are.

Q. Do you know anything about to what extent they are used?

A. Oh, I could not state to what extent, exactly.

Q. To what uses are they put except for live stock?

A. They are often used, in our territory, for hauling coal and lumber and oil and posts, or something of that kind.

Q. Do you know whether the trains in which dressed meat is carried run faster than the trains in which live stock is carried?

A. Not of my own knowledge, only by what I have heard.

Q. How much claims have you collected, on the average, per car load shipped, in your experience in shipping?

Mr. SEVERANCE: I object to that, as immaterial.

Mr. COWAN: It is very material, I think, to show by somebody else besides the railroad people, the risk, what the risk amounts to. You can never treat these things with exactitude. None of the railroad witnesses' testimony should have been admitted had I objected strenuously to it, some parts of it.

The COURT: How many witnesses would you require to
1442 make this amount to anything? The railroad side of it swore to the whole business, that is, wherein it affected hundreds of thousands of people. To contradict that you have got to bring in the great proportion of those hundred thousand people, and that you cannot do.

Mr. COWAN:

Q. Do you present claims for damages in every case in which you miss the market by delay?

Mr. SEVERANCE: That is objected to, as immaterial.

The COURT: The same ruling.

Mr. COWAN: Note an exception to the ruling.

To which ruling of the Court the complainant, by its counsel, then and there duly excepted.

The COURT: I don't suppose exceptions are necessary. This is sort of a chancery proceeding, anyway. This Court is pres-ming that you consider only competent evidence.

Mr. COWAN: That is, after the evidence is in?

The COURT: I am willing to give you plenty of room here, when I can see that it is at all material or competent. I desire, however, to limit it when it does not seem to be material.

Mr. SEVERANCE: I understand your Honor stated we need not note every exception.

The COURT: Oh, yes, you need not do that.

Mr. COWAN:

Q. What rate do you have to pay to Cedar Rapids from
1443 the places where you ship?

A. Twelve and a fraction cents. I am not certain of the fraction, about twelve and three-quarters, I think.

Q. What rate do you have to pay if you ship to Omaha?

A. I am not certain about the Omaha rate, I have not shipped to Omaha of late years.

Q. Who pays the freight on the live stock, the packer to whom you ship and sell at Cedar Rapids, or yourself?

A. The packer pays it and takes it out of the gross receipts, the gross amount paid for the carload.

Q. Do you buy any feeders on the Missouri River market?

A. Not often, I often sell them there.

Q. What time do you load at Osage, for the purpose of reaching, say, Monday's market in Chicago?

A. We load at eight o'clock in the morning.

The COURT:

Q. Sunday morning?
A. Sunday morning, and reach Chicago at seven o'clock Monday morning.

Mr. COWAN:

Q. Do you come on a regular train or a special?
A. A regular train to Waterloo. They make them of special trains in Waterloo sometimes.

The COURT:

Q. Is there a packing house at Waterloo?
A. A small one, yes.

1444 Mr. COWAN:

Q. What other freight is carried, if any, in the train carrying your live stock?
A. It carries all freight; it is a regular train, we ship on a regular freight train.
Mr. SEVERANCE: That is as far as Waterloo, you mean?
A. That is as far as Waterloo, yes, sir.

Mr. COWAN:

Q. Then, after leaving Waterloo, is it always a special stock train, or part of the time is it mixed?
A. I believe they call that train No. 9 or No. 7. I have forgotten which. Sometimes there are five or six number sevens and sometimes only one.
Q. Explain the manner of setting the cars at the loading chutes? How is that done, how do you set your cars?
A. The custom of the Illinois Central is to push the cars above the chute, and there is a slight grade where the loading chute is.

Mr. LYNDE:

Q. Are the chutes in the stock yards?
A. Why, certainly. They would not be any use anywhere else. The Railway company sets the cars at that chute and the shippers push them down there and load them, as a rule.
1445 Q. Do the Railway companies use engines or crews *doe* the purpose of setting the cars for loading?
A. The Great Western road is better about that than the Illinois Central. We are at the end of a division on the Great Western and when they bring out an engine I refuse to push the cars myself and they send them around.
Q. That is at Osage?
A. Yes sir.
Q. How is it at other points where there is no switch engine, where there is no division point?
A. Why the men who load the cars are in the habit of setting them.
Q. Is that the same in winter as summer?

A. Yes sir, unless occasionally at Osage, they have a special train there, in that case they have to have an engine because the men cannot handle it.

Mr. DAWES: This question was so broad that the answer would seem to apply to all points.

The COURT: He meant the other points that he knew about.

Mr. DAWES: I think the answer or question ought to be limited to the knowledge this gentleman has.

The COURT: Your answer is about the yards you know of?

A. All I am testifying about is these particular yards I have named a while ago. I don't include the whole state of Iowa.

Mr. COWAN:

Q. Now what is the custom at other stock yards which
1446 you have named, where you are acquainted with the method of doing the business on which you ship, and the particulars about setting cars?

Mr. LYNDE: I understood him to have answered that.

The COURT: He said they set them themselves.

Mr. COWAN:

Q. That applies to other yards as well as the Osage yard?

A. That applies to all the yards around there that I do business with.

The COURT: He said the Osage yard was better than the others?

A. Yes, that is the end of the division and when an engine comes out to get a car we make them set them.

Q. Is there any feeding en route to the market at Chicago shipping from your part of the country?

A. No, practically none.

Q. When you do have to stop to feed, for any reason, what is charged for the feed at the feed yards?

A. The price is quite strong; I couldn't exactly say what it is.

Mr. LYNDE: I move that be stricken out.

The COURT: The motion is sustained.

Mr. COWAN: For hay, what is it?

A. Well about 100 is what I paid for the last I paid for.

Mr. DAWES: If your Honor please I protest that the gentleman be confined to what he knows.

The COURT: You moved to strike it out; the motion is sustained.

1447 Mr. COWAN: Well he paid it in the case of hay.

The COURT: He doesn't know anything about it in the last three or four years.

Mr. COWAN: It becomes important in this: There has been a statement made about the expense of feeding, and I want to show that these feed yards are self supporting; they charge a profit on the hay which makes every one of them more than self supporting.

Mr. SEVERANCE: I think you better prove that by direct testimony, make them produce their books and show what they buy and sell.

The COURT: Put another question.

Mr. COWAN: If we could get the price of hay and see what it is per car, it would save time.

Mr. SEVERANCE: No, it takes longer if you have so many witnesses.

The COURT: Ask a question; go ahead.

Mr. COWAN:

Q. How many bales are fed to the car?

A. How many bales?

Q. Yes?

A. I didn't understand that question.

Q. How many bales of hay are fed to the car?

The COURT: In shipping to Chicago?

Mr. COWAN: When you are shipping to Chicago, if you stop to feed for any reason?

A. I have not stopped in transit for several years with cattle.

1448 Q. Then I will not ask you any more questions about it.

Cross-examination by Mr. BAXTER:

Q. Mr. Wilson you mentioned certain stock yards of the Illinois Central Railroad with which you are familiar. I wish you would state again, if you have not already done it, or if you have already done it, what is your estimate of the cost of constructing and equipping each of those yards and name them?

A. I named two yards on the Illinois Central railroad, I think if I remember rightly. I said the reasonable value of the Illinois Central railroad stock yard at Osage.

Q. The question is the cost of constructing and equipping the buildings, and wind mills and things if that sort?

A. The cost?

The COURT: The cost of construction?

A. The original cost?

Mr. COWAN: Yes, sir.

A. That was not the way I intended to answer.

The COURT: I know, but he is asking you now.

Mr. BAXTER: I am asking you now.

A. I would estimate the cost of the construction of the Illinois Central Stock yards at $2000 originally.

Q. At what point is that?

A. On the Illinois Central Railroad, the stock yards at Osage at $2000.

1449 Q. Does that include all wind mills and wells?

A. That would include the well, wind mill, scale and scale house.

Q. Side track?

A. No, I am not talking about side-tracks; I am talking about stock yards.

Q. Now the other stations.
A. The other was Lyle, I think I estimated that $400 or $350.
Mr. SEVERANCE: That is not the cost?
A. You want the cost of construction?
Mr. BAXTER: I want the cost of construction.
The COURT: Original?
A. In that case it might be $400 to $450.

Mr. BAXTER:

Q. Now what is your estimate as to what it cost to keep each of those yards in repair and to maintain them in proper condition during the calendar year 1904?
A. 1904, ten dollars for Lyle and $25 to $50 for Osage.
Q. You said that you had made some complaints to the agent of the Illinois Central Railroad in relation to the rates on live stock being too high; do I understand you correctly?
A. I have, yes sir, in a certain way.
Q. Will you state the name?
Mr. DAWES: You did in a certain way?
A. Yes sir.
Mr. BAXTER: Will you state the name of that agent, where he was stationed and when you made the complaints, and if they were in writing or not?
1450 A. I didn't make it in writing, no.
Q. Well, will you give us the name of the agent and when you made the complaint?
A. I complained to D. W. Logan, the Illinois Central agent at Osage, a year ago about the rate on live stock being too high compared with the rate on dressed meat from western points.
Q. Are you engaged in the business of slaughtering dressed beef?
A. I was already to engage in that business a year ago but I could not get a rate at Osage that was any where near what the Missouri River rate was on the same article and I complained to the agent for that reason.
Q. Did you want to ship your product in the dressed form?
A. I wanted to slaughter cattle and ship them in dressed.
Q. What was the ground of your objection if you wanted to ship the product? Did you object because the product rates were too low and you wanted to ship on those rates?
A. They quoted me 40 cents from Osage when I knew they were getting an 18 or 19 cent rate from Western points, that was the foundation of my complaint.
Q. You didn't complain then that the rate was too high, that is too high of itself, but it was too high as compared with the rate on the same product from somewhere else; is that it?
A. I complained to the agent at Osage that the rate on dressed meat from Osage was too high.
Q. As compared with what?
1451 A. As compared with the rates on dressed meats from Missouri river points. We are a great deal closer to Chicago than they are.

Q. Then your complaint was not that the rate on the product was too low as compared with the rate on the live animal?

A. No I didn't make any complaint on that comparison, it was too high in comparison with the rate on the live animal from Osage.

Q. Well, you said a while ago that the packer pays the freight and takes it out of the gross receipts, what do you mean by the term gross receipts, the amount coming to you?

A. We send a car of hogs to Cedar Rapids and sell them at 5 cents a pound. If they weigh 17,000 pounds they bring $850., and the packer figures them up at $850 and takes out the freight out of the $850 and sends us the balance.

Q. Then the man who ships the stock into the market there pays the freight, the packer advances it and afterwards takes it out?

A. He takes it out of the shipper of the live hogs, yes sir.

Q. That is what I want to get at; he pays the freight. That is all.

Examination by Mr. SEVERANCE:

Q. Mr. Wilson, what year were those stock yards at Lyle built?

A. I don't know.

1452 Q. How many thousand feet of lumber are there in them?

A. I could not tell you that.

Q. What was the price of lumber at the time they were built?

A. The price of that lumber, the reasonable market value——

Q. No, no, at the time they were built?

A. I could not tell you.

Q. How many days' work were put in in building them?

A. I could not tell you that, no sir.

Q. What was the price of labor at that time?

A. Labor up there?

Q. I mean skilled labor. You say you don't know when it was. Of course you don't know the price.

A. I don't know when they were built.

Q. No, I see. How much of last year, 1904, did you spend in Lyle?

A. I have been there a few times, that's all.

Q. Well, how many times?

A. 1904?

Q. Yes sir?

A. I have been there several times.

Q. In 1904? How many times were you in that city, in 1904?

A. Not very many times.

Q. Well how many?

A. I could not tell you.

Q. Five?

A. Perhaps.

Q. All day long?

A. Possibly and possibly not.

Q. Possibly not all day and possibly not as many as five days in the whole year?

A. Possibly not as many as five days.

1453 Q. You don't know what was being done to those stock yards during the other 360 days of the year?
A. I haven't the remotest idea.
Q. That is what I thought. That same testimony would apply to these other stations, wouldn't it where you say you have seen Stock yards?
A. I live at Osage.
Q. Outside of Osage.
A. I have been in the station of Little Cedar, David and McIntyre more than in Lyle.
Q. When were the Great Western Stock yards built at Osage?
A. They were built in 1891.
Q. How many thousand feet of lumber is in them?
A. I could not tell from here at this distance.
Q. What was the character of lumber in those stock yards worth in 1891 in Osage?
A. About $13 a thousand.
Q. By whom were they built?
A. By the Winona & Southwestern Railroad.
Q. Built by the Railroad Company with their own men, not built under contract, I mean?
A. I think not; I don't remember.
Q. Do you know?
A. Not for certain, no.
Q. You do not know whether they were built by the construction company that built the Winona & Southwestern road, or by the railroad, do you?
A. No, I do not.
Q. And do you not know what was paid for them?
1454 A. No sir.
Q. You do not know what they cost?
A. No sir.
Q. How many cattle are shipped at the Lyle market per annum?
A. How many are shipped at Lyle?
Q. Yes?
A. I could not say.
1455 Q. Do you ever ship hogs to the packing house at Austin?
A. Sometimes.
Q. Where from?
A. From Osage, sometimes.
Q. And from any other points?
A. I think not.
Q. How is that?
A. I think not.
Q. There is no charge for commissions or anything of that sort at Austin, is there?
A. No sir.
Q. What you get is net?
A. Certainly.
Q. Less the freight?
A. Certainly.
Q. And that is also true of Cedar Rapids, is it not?

A. Yes sir.
Q. There has never been any extensive slaughtering of either cattle or hogs at Osage, has there?
A. Only for local consumption, I guess.
Q. Just ordinary village slaughter house, that is all isn't it?
A. Yes sir.
Q. No packing houses there?
A. No.
Q. How many car loads of hogs do you ship per annum Mr. Wilson?
A. Sometimes 100 and sometimes 500.
Q. Well, say 1904?
A. Probably 150, I never counted them up.
Q. How many car loads of cattle?
A. Probably 50 out of the 150.
Q. Nearly all of them from Osage?
A. Some from Staceyville and some from Lyle, possibly.
1456 Q. What proportion was from Osage?
A. There is more from Osage than any other one point.
Q. Isn't there more from Osage than from all other points?
A. In 1904?
Q. Yes, and this present year too as far as you have shipped?
A. The present year I have not shipped very many loads outside of Osage. Last year I shipped more outside of Osage than I have this year.
Q. You are in some other business are you, besides live stock?
A. I am a farmer and feeder.
Q. And editor of a paper?
A. Editor of a paper there.
Q. Editor of a paper in Osage?
A. Yes sir.

The COURT: Call your next witness.
Mr. SEVERANCE: Just a minute, your Honor.

Q. Did you ship to exceed a half dozen cars of stock during the year 1904, from any town other than Osage, Iowa?
A. Yes sir.
Q. How many more than half a dozen?
A. I could not tell you.
Q. Well, give me—you have given your guesses here pretty freely, give us one on your own business?
A. I would estimate I probably ship 40 from one other station.
Q. Forty?
A. Forty, yes sir, maybe not quite so many, maybe a little more, probably 30 from the second station.
1457 Q. From what stations were they shipped?
A. Staceyville.
Q. How many?
A. I had more live stock at Staceyville than any other point outside of Osage.
Q. What road is that on?

A. That is on the Illinois Central.
Q. What other place?
A. I shipped from Orchard in 1894.
Q. 1904 or 1894?
A. 1904.
Q. What road is that on?
A. The Illinois Central.
Q. How many did you ship from Orchard?
A. I could not tell you.
Q. To what points did you ship?
A. I shipped to Chicago and Cedar Rapids, anywhere, I could not give you the details.
Q. You shipped generally anywhere?
A. Wherever I felt like shipping to, wherever there appears to be the best market.
Q. There are times you regard markets other than Chicago the best market?
A. There are, certainly.
Q. In spite of this situation which you complain of?
A. The rates are so high to Chicago, we have to do so.
Q. That is the reason you ship to other places?
A. That is one reason, yes sir.

1458 Examination by Mr. LYNDE:

Q. What proportion of your shipments are to Chicago, from Osage?
A. In cattle shipments nearly all to Chicago.
Q. How much of hogs?
A. Hogs, I shipped during the present year, more hogs to Cedar Rapids than to Chicago.
Q. You said for certain grades at Cedar Rapids, they paid about the same prices as Chicago prices?
A. I didn't so state.
Q. I mean less the freight charges; didn't I understand you to say so?
A. On some grades, they are closer to the Chicago market than they are on the other grades.
Q. What do you mean by "closer"?
A. The price at Cedar Rapids is closer to the price at Chicago on some grades of hogs than it is on other grades of hogs.
Q. Yes, I understand, but what do you mean by "closer"?
A. Closer?
Q. Yes, give us the figures.
A. Five cents is closer than ten cents on that line.
Q. Do you mean five cents more or five cents less?
A. Cedar Rapids is lower than Chicago, of course.
Q. Yes, how much?
A. It varies.
Q. On the higher grades where it is nearest the Chicago prices, what is the difference?
A. The highest grade at the highest time I ever saw?

1459 Q. Well, in your experience, yes.
A. I have seen a time when, on some grades Cedar Rapids was as high as Chicago.
Q. In full.
A. In full, very seldom.
Q. Well, take your general experience.
Mr. DAWES: When was that?

Mr. LYNDE:

Q. Yes, when was that?
A. I could not tell when that was but I have seen that occurrence.
Q. Take your general experience, what is the difference?
A. Ordinarily Cedar Rapids would pay about 15 cents per hundred below Chicago on the same grade. For instance T. M. St. Clair & Company of Cedar Rapids would pay $4.85 cents for their premium grade of hogs at a time when Chicago would pay $5.00 for the same class of hogs.
Q. I see. Do you ship to Sioux City?
A. Not often.
Q. Omaha?
A. Very seldom, I haven't shipped to Omaha for a year.
Q. How far are you from those two points?
A. I am on the north line of Iowa.
Q. I know, what is the distance?
A. I could not say.
Q. Now, about this bedding which you, yourself put in these cars; you say you use sand, do you?
A. In bedding cars for hogs, sometimes I use sand and sometimes I use cinders.
1460 Q. What depth do you put in a car?
A. I don't put any depth at all.
Q. What do you mean by that?
A. All that is necessary for me in bedding a car of hogs, if I have a clean car is to throw sand enough on the bottom so the hogs will not slip, that is all the sand that is necessary to bed a car.
Q. How much is that?
A. That would run from three to five hundred pounds.
Q. How much in depth?
A. In depth, it wouldn't have any depth.
Q. Oh, it must have some depth Mr. Wilson.
A. Well, a very slight depth, the depth of one grain of sand is sufficient for the depth as far as that is concerned.
Q. Well, how about your cattle, what do you do with them?
A. A well bedded car of cattle requires about 500 pounds of good straw or prairie hay is better.
Q. Do they use sand in those cars at all?
A. I never use sand in cattle; I don't like it.
Q. That don't have any depth?
A. Well, that will have a depth, yes, that will be a foot deep.

Examination by Mr. DAWES:

Q. May I ask a question.

The WITNESS: Yes sir.

1461 Q. I understood you to say that the weight of the bedding of a hog car was about 500 pounds?

A. The weight of the bedding?

Q. 500 to a thousand, of the bedding, did I understand you right?

A. The weight of the bedding in a hog car?

Q. I didn't mean to misquote you, I understood you to say that a car before it had been cleaned, would contain from 500 to 1000 pounds of bedding and refuse and so on?

A. A cattle car, yes.

Q. A cattle car you also stated, a man could clean 40 of those a day?

A. Yes sir.

Q. That is from 10 to 20 tons, one man with a shovel can clean out?

A. I will clean 40 cars myself.

Q. That is you will clean 20 tons with a shovel?

A. Yes sir, 20 tons with a shovel, out of a car.

Q. That is all. You can get good wages around here.

OSCAR STRIBLING, called as a witness in behalf of the petitioner, having been first duly affirmed, testified as follows:

Direct examination by Mr. COWAN:

Q. State your name.

A. Oscar Stribling.

Q. Where do you live?

A. Dayton, Iowa.

1462 Q. Where is that in Iowa?

A. That is 59 miles northwest of Des Moines, on the road to Fort Dodge, on the M. & St. L.

Q. How far from Chicago?

A. About 417 miles by way of the Rock Island.

Q. What is the rate of freight on cattle?

A. 23½ cents.

Q. On hogs?

A. The same.

Q. What business are you engaged in?

A. Farmer.

Q. Do you ship cattle and hogs?

A. I do.

Q. How often?

A. Oh, on the average three or four times a year.

Q. Who beds the car in which they are shipped?

A. I do.

Q. Who furnishes the bedding?

A. I furnish it.

Q. Who cleans the cars?

A. Sometimes they are cleaned, and sometimes they are not, if they are not cleaned and I think they need it, I clean them myself, if I don't I let them go without.

Q. How much does the bedding and refuse in a car weigh where it has just been used on one trip, when you clean it out?

The COURT: What kind of a car, now, cattle car or hog?

Mr. COWAN:

Q. Well, take cattle?

1463 A. Well, that is a pretty hard question to guess at, I never weighed it. I would judge about 1000 to 1200 pounds.

Q. How long does it take you to clean a car?

A. It depends on how deep the "refuge" is.

Q. Well, state about how long it generally takes?

A. Well, I should think an ordinary car, I shipped the other day one car load, if I cleaned it out, I think it would have took two or three hours, but I let it go without. But the average would take from an hour to an hour and a half, I would want that to clean a car myself.

Q. How is it with a car that has just been used one trip?

A. Oh, I think one hour would be sufficient.

Q. How many pounds of cattle do you ship for a 36 foot car?

A. From twenty three to twenty four thousand pounds.

Q. Do you go with your stock?

A. Sometimes. Most always with cattle, not always with hogs.

Q. Have you an opinion as to whether those rates which you pay are too high?

Mr. DAWES: We object your Honor, of course.

The COURT: Find out what he knows about it, the objection is sustained.

Mr. COWAN: Well, I don't know any way he knows except he pays the freight, he says he ships and pays the freight, I

1464 don't know any way to qualify him, he isn't a railroad man.

The COURT: I don't think his opinion would amount to anything unless you show he has investigated the matter, or compared the rates in other neighborhoods and on other railroads.

Mr. COWAN:

Q. Have you made any investigation with respect to the rates?

A. I have not.

Q. In what sort of trains do you ship, stock trains or mixed with other freight?

A. Well, that questions, I would have to answer that by saying that we ship out of our town on a regular stock train, if we get out on Sunday morning, but if we come any other time it is on a local.

Q. A local that runs every day?

A. Yes, it runs every day.

Mr. DAWES: Entirely stock, or just a local mixed train?

A. A local stock train Sunday morning, to Perry, that is a stock

train and then we get on the main line of the Chicago, Milwaukee & St. Paul.

Q. Do you mean this train you ship on has other merchandise, what you call a local train, is it a mixed train or a stock train?

A. Yes sir, it is just a local freight train.

Q. That local train runs every day for regular business?

1465 A. It runs every day.

Q. That is on what railroad?

A. The M. & St. L., Minneapolis & St. Louis.

Q. How far do you go until you strike the main line of road that you come to Chicago on?

A. Twenty-five miles to Perry.

Q. What number of cars are usually carry- on that stock train every Sunday?

A. Well, now, that is another question that I will have to answer by saying, that they carry from—they come down from Ruthven over that road and pick up what cattle or hog cars there is to Valley Junction; some drop off at Grand Junction for the Northwestern, some at Perry for the Milwaukee, and some go on to Valley Junction for the Rock Island. We can ship over any one of those three roads. Sometimes they have ten cars, sometimes only three or four, and sometimes a dozen, sometimes more.

Q. When you strike the road that you come here on, what sort of a train do you come in?

A. From there on?

Q. Yes.

A. A mixed train part of the way and then a stock train the rest of the way.

Mr. LYNDE:

Q. From what point is it made a stock train?

A. From Savanna, I believe, is the town at the River, isn't it?

Q. Yes.

1466 A. We come from Perry to Savanna on a mixed train almost always, not always, but most always.

Mr. COWAN:

Q. And all sorts of freight, you mean?

A. Well, they have box cars, and cattle cars, I suppose they have freight in them, some of them have, and some of them are empty.

Q. What are the sizes of the stock trains they run on the main line, as you observed them?

Mr. DAWES: He is not on the main line, as I understand it.

Mr. COWAN:

Q. On the Milwaukee, after he gets on the main line?

A. I think from 50 to 60 cars.

Mr. LYNDE: Loaded stock cars?

A. The last train I cam- in on at Savanna, when we got into Savanna, I think it had 53 or 54 cars.

Q. Well, coming into Savanna, it is a mixed train you said?

A. Yes sir.

Q. How many stock cars then?
A. Well, I could not say, about 20 I should judge.
Q. Do you know how many of the other cars were loaded or empty?
A. No, I don't.

Mr. COWAN:

Q. Now, in the stock trains coming out of Savanna, how many?
A. I could not tell because it was dark, I didn't count.
Q. Well, in your observation how many cars were there
1467 in a train?
A. Well, coming from Rock Island a time or two, at Rock Island, I have counted as high as 60 and 65 cars of stock. Coming over the Milwaukee, I don't know, I never counted.

The COURT:

Q. On one train?
A. On one train, yes sir.

Mr. SEVERANCE:

Q. One engine?
A. One engine. That was from Rock Island in, you remember, not the other side.

Mr. COWAN:

Q. Who pays for the bedding, who furnishes the bedding for bedding the cars at the stations where you ship?
Mr. SEVERANCE: He already stated that, and said he furnished it.
The COURT: He has answered that. You said, you furnish your own bedding?
A. Yes sir.
Q. And furnished the straw or hay?
A. I always furnish hay and sand both, I never had any furnished me yet.

Cross-examination by Mr. DAWES:

Q. This 60 car train you spoke of, you have never seen any other trains that compared in length to that on the Rock Island?
1468 A. On the Rock Island the other side from Des Moines, in from Valley Junction?
Q. No; I am talking of trains of stock cars, loaded.
The COURT: Loaded stock cars with cattle and hogs?
A. I was just saying from Valley Junction, they brought as high as 35 or 40 to Blue Island, or Rock Island, I mean, across there at that little town where the Division Station is, I never can think of it.
The COURT: Moline.
A. Moline, this side of Moline, they doubled up the train and I have seen as high as 60 or 65 cars.

Mr. DAWES:

Q. On how many occasions have you seen that?

A. On two different occasions.
Q. You say you come in, you ship how many times a year, three or four times a year?
A. An average of three times a year.
Q. Do you always come in yourself?
A. I come in with the cattle, but not with hogs.
Q. Your three or four times a year includes cattle and hog shipments?
A. Yes, I just ship my own feeding.
Q. How often have you been in over any of the roads within the last four years?
A. Well, I have been over the Rock Island road five times.
Q. In the last four years?
A. In the last three years.
1469 Q. In the last three years?
A. And over the Milwaukee road only twice. I never came over any other road.
Q. On the Rock Island road when you observed these 60 cars in a train, how long ago was that?
A. Last April. I left home the 7th of April.
Q. The seventh of April and arrived here the next day?
A. And arrived here the next morning?
Q. Yes, at eight?
A. I think I am right on that, yes it was the 7th of April, I shipped my cattle.
Q. 1904?
A. 1905, last spring.
Q. This year, 1905?
A. Yes sir.
Q. What rate of speed did they make coming in with that train do you know?
A. From Rock Island do you mean?
Q. Yes.
A. Well, we left Rock Island in the evening at about eight or nine o'clock and was here the next morning at six o'clock, or seven.
Q. You came in on time?
A. Yes sir.
Q. To the market you expected to make?
A. Yes sir, we were on the market.
Q. Where were you when you counted those cars, were you on the siding?
A. When we got up to——

Mr. COWAN: Bureau Junction, is that the place?
Mr. DAWES: I don't mean the station.

1470 A. I was standing at the side of the engine when they started out, and they pulled up past me to get on the caboose.
Q. So you saw the entire train?
A. Yes sir.
Q. The entire train passed you then?
A. Yes sir.
Q. And you examined each one and saw it was a loaded car?

A. I didn't examine them only just as I saw them go by it was light enough so I could see.
Q. You were confident they were all loaded?
A. Yes sir.
Q. And what was the load, cattle or hogs?
A. Both.
Q. About half and half?
A. I would not like to say how many, I never counted.
Q. How many cars did you have on that train?
A. I had two load- of cattle and one of hogs.
Q. Now, to what extent are hogs shipped, or cattle from your station, are you the only shipper there?
A. No, I just ship my own feeding. There is a buyer there, there is several men shipping, about 300 loads a year.
Q. Are there stock yards there?
A. Yes sir.
Q. How large?
A. Three pens and an alley, and then a small pen where they run them off the scale.
Q. How many cattle are shipped from that place a year, estimate it?
A. Well, that is pretty hard to tell.
Q. Well, I don't mean accurately?
A. I should judge 50 to 60 car loads.
1471 Q. A year?
A. Yes sir.
Q. Cattle and hogs both?
A. No, cattle. The shipper will ship an average of one or two car loads of hogs a week the year around.
Q. That means the whole market, the whole town?
A. Yes sir, all the hogs; the farmers ship their own cattle, they don't hardly ever sell them, they ship them themselves.

Examination by Mr. SEVERANCE:

Q. You don't know whether that train ran through to Chicago as a solid train, did you see it when you came in here in the morning?
A. Well, we came in on the train; I have no knowledge that there was any change.
Q. You saw it in the morning, saw the whole 65, did you say?
A. I didn't count them in the morning when we got here.
Q. Well, how many cars did you see, 65?
A. I said there was 60 or 65, and one hauled 53 that I know of.
Q. And when you got to Chicago in the morning, there was still this long train?
A. Yes sir, but I didn't count them.
Q. Last April?
A. April 7th.
Mr. LYNDE: Regular 36 foot cars?
1472 A. I don't know, I don't think they were.
Q. Those you had?
A. Yes sir, mine.

Q. How did the others seem to compare?
A. Most of them about the same.
Q. They looked about the same?
A. They have three sizes of cars.
Q. As far as you remember, about the same cars that you had?
A. Yes sir, a good deal the same.

Mr. DAWES:

Q. Will you be kind enough to tell me in reference to the bedding, you say you furnished your own bedding?
A. Yes, sir.
Q. Sand or straw?
A. I always have——
Q. The sand for hogs and straw for cattle?
A. Hay for cattle.
Q. Where do you get your sand?
A. Well, the last few times that I had any sand put in the cars, I hired the draymen in town to go down to the creek close by and haul it up.
Q. Do the railroads keep any supply of sand there?
A. They have not for three or four years. There was some sand there three or four years ago but there has been none there lately.
Q. And three years ago, you got your supply from the railroad?
A. I didn't *sgip* any hogs then, I never used a pound of sand that the railroad company furnished.
1473 Q. But you know that there is no sand there now at this particular station?
A. I know there it not, wasn't when I left home.

Mr. SEVERANCE: May I ask Mr. Wilson one question that I overlooked. Just sit there where you are.

Mr. WILSON, recalled by and examined by Mr. Severance, testified as follows:

Q. You said you sometimes use sand and sometimes cinders for bedding, where do you get the cinders?
A. Gather them up around.
Q. Around where?
A. Around the side track, wherever I can find them.
Q. They belong to the railroad company?
A. Yes sir.

JAMES DELANEY, called as a witness in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. What is your name?
A. James Delany.
Q. Where do you live?
A. Marengo, Iowa.
1474 Q. What is your business?
A. Farming and stock business.

Q. For how many years?
A. About twenty-five.
Q. On what railroad?
A. I am now on the Rock Island, main line.
Q. How far from Chicago?
A. Two hundred and seventy miles.
Q. Do you ship hogs to Chicago?
A. Yes sir.
Q. Who beds the cars?
A. Well, I have bedded them myself.
Q. At your own expense?
A. Yes sir.
Q. Who furnished the bedding?
A. I do.
Q. What do you bed with?
A. In the summer time it is sand, generally.
Q. In the winter-time, hay or straw?
A. Hay or straw, yes sir.
Q. Do you haul the sand yourself?
A. I have it hauled, yes sir.
Q. Have you ever been paid anything for doing that?
A. No sir.
Q. Do the railroads ever offer to bed them for you?
A. No sir.
Q. How much do your cattle weigh per car that you ship in?
A. Oh, from 22 to 26 or 27 thousand pounds.
Q. And your hogs?
A. From 15 to 18 thousand.
1475 Q. How many cars have you shipped in ten years?
A. Well, that is pretty hard for me to tell.
Q. Approximately?
A. Probably I have averaged 50 a year in the ten years, I don't buy as much as I feed.
Q. During that time have you ever received any pay for loss or damage.

Mr. DAWES: I object to that your Honor.

Mr. COWAN: I think that is very material, your Honor, to show that there has been no risk in shipping for ten years, 50 cars a year, there is no risk to him, and I think it is material to show he has received no damage.

The COURT: Well, I think it is a waste of time, the evidence of the railroad companies said they were subject to that, they made an effort to have them delivered in the morning, they didn't make any statement how much damage they paid.

Mr. DAWES: Yes, we gave definite figures, I can't remember the exact figures. The testimony will show, but Mr. Crosby testified on behalf of the Burlington Road that they paid so much money.

The COURT: For delays?

Mr. DAWES: Yes, sir.

Mr. SEVERANCE: Mr. Stickney testified that they paid some twenty-

four odd thousand dollars for delays. It wouldn't prove any-
1476 thing to show that this man had never had any. If Mr. Stickney had testified that he paid money to this witness, or if Mr. Crosby had testified he paid money to this witness, then it would be proper to introduce the witness on the stand to deny that statement, but the fact he has not received, or has not put in a claim, whether he justly had a claim or not, or that he has not been paid any money, does not prove anything, or does not tend to prove or disprove anything.

Mr. COWAN: I am not trying to prove that they didn't pay out money, they did, but they talk about the risk, and here is a many that shipped for ten years, and shipped 50 cars a year, 500 cars in that time, if he has been paid an nominal amount, or nothing, it is important as showing the risk is certainly a very slight one, going over a period of ten years.

The COURT: The objection is sustained.

Mr. COWAN: They doubtless picked out the biggest year they have got, we know the disposition of mankind.

The COURT: Well, I will sustain the objection.

Mr. COWAN:

Q. Do you know anything about the relative speed at which the trains run which carry meat over the lines of the railroad which you patronize in your shipments from Marengo to Chicago and
1477 the live stock trains, which is the faster and which is the slower train?

Mr. SEVERANCE: I object to that until a foundation has been laid.

The COURT: Find out what he knows about it.

The WITNESS: All I know about that is, I bought stock in Omaha, I bought stock feeders in Omaha to ship to Marengo and the Commission man tried to get them on to a meat train so I would get a faster run home, that is all I know.

Mr. SEVERANCE: That is immaterial, that is not a train to Chicago.

Mr. COWAN:

Q. Have you made any comparison of the rates made, any study or investigation of the question of the amount of rates you are paying, so as to form any opinion with regard to whether they are too high or too low?

A. I never have myself; I haven't paid any attention to what the dressed meat paid.

Q. What was the size of trains in which you shipped your light stock to Chicago?

A. Well, a mixed train, the mixed train from my place to Rock Island, it is made up of a stock train generally—sometimes there is some dead freight on it, but not often. If they have got enough stock to put on, and I have had them tell me there——

Mr. DAWES: I object now, only what you know if the Court please.

1478 A. I don't know myself, I never counted.

The COURT: Everybody can tell what other people told them here.

Mr. COWAN:

Q. Who told you?
A. Some railroad man.
Q. In charge of the train?
A. Yes sir, that they have 60 or 75 cars.

Mr. LYNDE: I want to object to any statement made to him.

The COURT: Wait a minute, one counsel at a time and the witness at a time, when the witness *is* has answered the question, make a motion to strike it out. I object to your interfering with the witness, three of four counsel at once, and there are a dozen counsel here. We must have order in the regular way.

Mr. SEVERANCE: On the suggestion of the Court, I move to strike out the answer.

The COURT: Are you through with that answer?

The WITNESS: Yes, sir.

The COURT: Well, the motion is overruled.

Mr. DAWES: I wish to be entirely courteous, as your Honor knows, to the Court but I would suppose that we had a right to object in an orderly procedure to the question- as they are put, rather than that the question should be answered.

The COURT: Not to interrupt the witness.

1479 Mr. DAWES: I didn't mean to do that, I apologize to the Court.

The COURT: No apologies are necessary but there are a large number of counsel here, and you are all anxious about your different clients, of course, and the better way is for one person at a time, one counsel at a time, one examiner at a time, and one witness talking, only one person talking, and that being the witness.

Mr. SEVERANCE: I don't understand your Honor denied my motion to strike out because I didn't get around to object in advance.

The COURT: No.

Mr. SEVERANCE: But on the ground that the question is properly answered.

The COURT: I would not be too technical on all of these mattees, there is a good deal going in here that if you objected to it, and we stopped and studied it, would not go in. In this sort of a case, it is the duty of the Court to hear all sorts of evidence. I am willing to hear almost anything that don't take up too much time.

Mr. COWAN:

Q. In your experience for ten years as to the size of the trains that live stock is carried in, that they are increasing or diminishing in point of the number of cars carried?

A. Well, it has increased.

1480 Q. Has your country developed so as to produce more shipments and more business for the railroads or not?

A. It has.

Q. Is it still increasing in the volume of its business?

A. Well, I think so, it is holding its own, it is not going back any.

Cross-examination by Mr. BAXTER:

Q. You were asked awhile ago about rates, have you ever made any complaint to any railroad official that the rates on packing house products were less than the rates on the live stock?
A. No sir, I never did.

Examination by Mr. LYNDE:

Q. Do you ship to Chicago?
A. Most always to Chicago, yes sir.
Q. Do you come with your shipments yourself?
A. Not always; I have shipped some to Davenport.
Q. What, cattle or hogs?
A. Hogs.
Q. What is there at Davenport, a slaughtering house?
A. Slaughtering house, yes sir; there used to be one there, I guess there is one yet.
Q. What was the title of it?
1481 A. The Tri-City Packing Company.

Mr. SEVERANCE:

Q. How far do you live from the Mississippi River?
A. About 85 miles.
Q. What is the rate to Chicago from your place?
A. I think it is 21 cents, I am not sure now.
Q. That is on both cattle and hogs?
A. Both cattle and hogs, I think it is the same rate sir.
Q. You never shipped to Cedar Rapids?
A. Yes. Well, I have not from Marengo, no; but then I know what the rate is to Cedar Rapids.
Q. You have shipped hogs to Cedar Rapids?
A. I have not from Marengo but I have on the other road, from Blairstown, on the Northwestern.
Q. The movement of live stock from your region is all toward Chicago, practically, isn't it?
A. On the main line of the Rock Island it is, not on the Milwaukee.
Q. Where does the Milwaukee carry stock?
A. It runs east of us about six miles.
Q. I say where do they carry stock?
A. To Ottumwa and Cedar Rapids.
Q. To the packing houses there?
A. Yes sir.
Q. Can you give me the date you were at Rock Island and saw this train you were informed contained 75 cars of loaded live stock?
A. I don't think I could.
Q. Can you give me about the date?
A. Well, I was there in July?
1482 Q. Of this year?
A. Yes sir.
Q. Was that the time?

A. Well, it was this year I am pretty sure. I was there most every month, July, June and May.
Q. Can you tell me any of the dates in those months, take July for instance, were you there after the Fourth of July?
A. It was after the Fourth of July, yes sir.
Q. About how long after?
A. Well, I have no way of telling now, but I was in in July, I don't know whether it was July, or June or May that I was told this.
Q. But you saw this train and were told that in one of these months?
A. I didn't count the cars, I just asked the railroad man how many cars were on that train.
Q. How many of them were loaded?
A. I supposed they were loaded, they looked to me as though they were loaded.
Q. Do you know whether they were or not?
A. No, I don't, no sir.
Q. Were they all stock cars?
A. All stock cars, yes sir.
Q. The train was moving east?
A. Yes sir.
Q. One engine?
A. Yes sir.
Q. Were you on the train?
A. I got on the train, yes, sir.
Q. And went to Chicago with it?
A. Yes sir.
1483 Q. What time did you leave Rock Island?
A. Eight or nine o'clock in the evening.
Q. What time did you arrive in Chicago?
A. About seven, I think.
Q. What is the distance, do you know?
A. 185 miles.
Q. How much?
A. 185 miles, I think.
Q. Do you know how many times you stopped during the night?
A. I don't know anything about it.

Mr. COWAN:

Q. Have you any knowledge in regard to the cost of lumber, construction, labor and the like, so that you could give the value of the stock yards?

Mr. DAWES: I object; there has been no testimony whatever relating to the cost of the stock yards on the Rock Island road, and this would rebut nothing.
Mr. COWAN: Didn't Mr. Gower make a statement?
Mr. DAWES: I may be mistaken, maybe he did.
Mr. SEVERANCE: He should be asked as to his business, rather than to be asked the general question what he knows.
Mr. COWAN: He told what his business was, he has been shipping for ten years.

Q. You are acquainted with the stock yards there, are you?
A. Yes sir.
Q. You know the size of them, how they appear and have known them for years?
1484 A. Yes sir.
Q. What is your opinion as to the value of those stock yards.

Mr. DAWES: I object to that.
The COURT: The objection is sustained.

Mr. COWAN:

Q. Did you ever build any stock pens?
A. I have built them on the farm, yes sir.
Q. And used lumber of the same character in their construction?
A. Yes sir.
The COURT: Well, give your judgment.
A. My judgment on the stock yards, I would not know what to gove.
Mr. DAWES: He says he would not know anyway.
(Witness excused.)

1485 JOSEPH COX, a witness called on behalf of the petitioner, being first duly sworn testified as follows:

Direct examination by Mr. COWAN:

Q. Where do you live?
A. I live at Boone, Iowa.
Q. How far is that from Chicago?
A. 340 miles.
Q. What business are you engaged in?
A. Engaged in farming, stock raising, stock feeding and shipping, that is shipping of my own stock.
Q. How long have you been engaged in that business?
A. Well at that point about three years and a half; I moved there three years ago east March.
Q. Where did you live previous to that time?
A. I lived at Gibson City, Illinois.
Q. How many cars of live stock did you ship from Boone or elsewhere in Iowa to Chicago?
A. I think I have shipped 24 cars out of Boone, and shipped six cars into Boone.
Q. Do you frequently come with your shipments of live stock to Chicago or not?
A. Yes sir.
Q. Do you ship for others besides yourself?
A. Well I have bought parts of loads of hogs from other parties and put them with my hogs and I bought one load of fat cattle that I shipped.
Q. Do you ship altogether from Boone?
A. Yes sir.

1486 Q. What time do you load there in order to reach Chicago say for Monday's market?

A. For Monday's market we load there Sunday morning, between 7:30 and 9.30 o'clock.

Q. How do you come to load at that hour?

A. Well, the first few years I was at Boone I patronized the Milwaukee and they could not get their engine up from Madrid earlier than that time for to get the stock or they didn't do it, I was as late as 9:30 going out of Boone one Sunday morning as I remember.

Q. Is there a regular train comes by and takes your stock?

A. The main line of the Milwaukee does not reach Boone, it is a stub, but they run their engine over there on Sunday for to get the stock, just carry a way car over and pick up whatever stock is to be taken out, and they take it back to Madrid and put it in their regular trains.

Q. Take it back to what place?

A. Madrid.

Q. Is that on the main line?

A. The main line from Chicago to Omaha.

Q. Who beds the cars?

A. I bed the cars.

Q. Who furnishes the bedding?

A. I furnish the bedding.

Q. What is the weight of the bedding, if you have a fresh car and you ship your load of stock in here to Chicago and unload them, what is the weight of the bedding, manure and stuff remaining in the car?

Mr. SEVERANCE: If he knows, if he has ever weighed it?

1487 A. I think that in different weather that the weight of the bedding would vary, I think in sunshiny or windy weather it would not be half so heavy as in misty rainy weather, I think that would have to be estimated in two different ways.

Q. Well what two different ways do you estimate it?

A. Well I would say in dry, windy weather, you mean after the stock had been unloaded out of the car?

Q. Yes?

A. Well, I would think from five to seven hundred pounds.

Q. And in wet weather?

A. I would think from ten hundred to twelve hundred pounds.

Q. What do you use for bedding, sand or straw or hay?

A. I use straw altogether for everything because it is the cheapest.

Q. Do you know the custom with respect to bedding and who furnishes it? at other stations than Boone?

A. At other yards in Boone?

Q. Yes, other than Boone?

The COURT: Other than Boone, other cities?

A. No, I do not.

Mr. COWAN:

Q. How long does it take you to come from there to Chicago?

A. Well I have had very good luck coming from there. I think

I have made some trips in about 20 hours, while 22 hours was consumed at other times. I have known other parties to be on the road longer than that.

1488 Q. What is the general time, what time do you expect to get here, when you leave there in the morning?

Mr. SEVERENCE: That is immaterial what he expects.

The COURT: What time is he due here?

Mr. COWAN:

Q. What time would you be due here?

A. Now this last year I shipped over the Northwestern and their time to leave, the train that we are supposed to load for is 7:30. And I think that train is due at the Stock yards at 5:30 in the morning.

Q. What size trains are these trains that carry live stock with which you come?

A. Well, the trains vary in size, I think from 30 cars to 45.

The COURT: Loaded with live stock?

A. Well I could not say as to being all live stock; I have frequently asked the conductor how many cars he had in the train. I remember one night that I came into Savannah and I asked the conductor as we came in there how many cars he had on the train and I think he told me — had 47 cars in there.

The COURT: That was coming into Savanna or coming from Savanna to Chicago?

A. Into Savanna.

The COURT: That was a mixed train?

A. A mixed train; there were box cars, I don't know whether they were loaded or not.

1489 The COURT: We don't care about that.

Mr. COWAN: Now in a stock train coming out of Savanna in here?

A. I had inquired as to that.

Mr. DAWES: I object to that your Honor unless it is his observation.

The COURT: The objection is sustained.

Mr. COWAN:

Q. Have you been told by conductors in charge of the train?

A. Yes sir.

Mr. DAWES: I object.

The COURT: The objection is sustained.

Mr. COWAN:

Q. Did you notice yourself to see how many cars you had in your train?

A. No, I would not have no way of knowing.

Q. What do your cattle weigh per car that you ship in here?

A. I usually load from 22 to 26,000 pounds in a car.

Q. That is a 36 foot car?
A. Yes sir.
Q. Now what has been your experience with respect to speed of trains, do you know whether there are meat trains carried on the line of road you come over?
A. Yes sir, there has been meat trains.
The COURT: Do you mean separate trains entirely of meat?
A. Well I don't believe they are entirely separate trains, but they are called meat trains.
Q. In which meat is carried?
A. They are called meat trains.
1490 Q. Have you come on them?
A. I remember, if the Court will permit——
The COURT: Yes, make it short.
A. I remember of an occasion where I bought cattle in Kansas City to ship to Boone, and the commission man there told me he would do all he could for me and tried to get my stock on a train as I had a long trip ahead of me and I got it on a meat train.

Mr. DAWES: I object, your Honor. That is merely a suggestion similar to that made before, that they would tell him they would try to get the car in a good train.
The COURT: Yes, sustained.
Mr. COWAN: What I want to ask about is the speed of meat trains.

The COURT: Well do you know the speed of meat trains?
A. Well, the speed of that train from Kansas City to Marion Iowa was about 14 hours as near as I can get it.
The COURT: How far is it?
A. I don't know how far it is but I know it is a fast train.
Q. You don't know, then let it go.
Mr. DAWES: How far is it from Boone to Chicago?
A. Three hundred and forty miles they tell me; I never measured.

1491 S. J. WHEELER, a witness called in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. What is your name?
A. S. J. Wheeler.
Q. Are you engaged in the farming, and cattle and hog business, and shipping to the market?
A. Yes sir.
Q. At what place?
A. Well, farming and feeding stock.

The COURT:

Q. Where?
A. Boone, Iowa.

Mr. COWAN:

Q. And have you been shipping to this market, Chicago?
A. Yes sir.
Q. How often do you come?
A. Well, I was buying stock in Boone for about eighteen months.
Q. But I asked you how often you came to Chicago on the train to bring your product?
A. Probably three or four times a year.
Q. How often did you ship?
A. In the last two years or about eighteen months, when I was buying stock in Boone, I suppose I shipped about one or two loads a week, probably two loads a week.
Q. Who bedded the cars?
1492 A. I bedded the cars, or had it done.
Q. Did you furnish your own bedding?
A. Yes sir.
Q. What was the weight of that bedding after your cattle are unloaded out of the cars, what was the weight of the bedding and manure?
A. Six or seven hundred pounds.
Q. In your experience of coming to Chicago on the live stock trains, do you know whether you passed meat trains on the road or they passed you, going in the same direction?
A. From Boone to Chicago?
Q. Yes.
A. Well, I don't remember whether any meat trains ever passed us or not, I remember coming from Omaha to Boone with stock and there was a meat train passed us at Carroll.
Q. Have you ever come on a meat train yourself?
A. No sir.
Q. You don't know anything about the relative speed of the train then?
A. No sir.
Q. I said, do you know anything about the relative speed of the train?

Mr. SEVERANCE: He said "no."

Mr. COWAN:

Q. What about the sizes of the trains in which the live stock is carried, which comes here to Chicago?
A. Well, I have shipped from Jordan, there is generally a mixed train comes down from Boone and gathers up stock from
1493 there on to Clinton, and from Clinton on in it is a stock train, hauls stock.
Q. How many cars *is* usually in those stock trains?
A. Thirty-five or forty cars I should judge.
The COURT: Did you ever count them?
A. No, I never counted them, I don't know anything only what the trainmen told me.

Mr. COWAN:

Q. What other places do you ship from except Boone?
A. I shipped from Jordan.
Q. What is the custom there with respect to the bedding of the cars?
A. Well, we bed our own cars.
Q. What do you put in the cars in the case of cattle shipments?
A. Straw and hay.
Q. Is the business on the increase in that vicinity?
A. Well, I think it has been, yes sir.
Q. Why don't you ship to Missouri River?

Mr. SEVERANCE: I think that is immaterial.
The COURT: The objection is overruled.

A. Well, Chicago is a better market.

Cross-examination:

Mr. BAXTER: You spoke of a meat train passing a stock train, I understood you were on the stock train.
1494 Mr. SEVERANCE: On a mixed train, he said.
Mr. BAXTER: I thought he said the meat train passed stock trains.
Mr. SEVERANCE: He said a meat train passed a mixed train, that is right isn't it?
The WITNESS: Yes sir.
Mr. DAWES: What road is Jordan on?
A. The Northwestern.

Mr. LYNDE:

Q. When was it you were told at Clinton as to this trainload of thirty five or forty cars?
A. By the trainmen after we got on at Clinton.
Q. I know, but when was this?
A. Why, last May, I think, the last shipment I made.
Q. Give me the date as near as you can?
The COURT: Can you fix the date so that he can look it up.
A. Why, I think it was the last of May.

Mr. LYNDE:

Q. Between the 20th and the 30th, would you say, of this year?
A. Yes sir, this year.
Q. As to these weights, did you ever weigh a car after it was unloaded here in Chicago?
A. No sir.
Q. Do you see the car after it is unloaded at Chicago?
A. Yes sir, sometimes.
Q. Where do you see it?
1495 A. I wait to see my cattle unloaded.
Q. What?
A. I have waited to see the cattle unloaded.

Q. Well, did you pay any attention to the car at that time; you were interested in the cattle, weren't you?

A. Nothing more than to look in at the cattle.

Q. You know the car is there and see the cattle are taken out and you don't know from any actual experience what the weight is, of the contents of the car, do you?

A. Well, I know how much bedding I usually put in.

Q. Well, you don't know as to any weight, or anything about it?

A. No, I never weighed any.

Q. That is right, isn't it?

A. I never weighed any.

Q. That is all.

Whereupon an adjournment was taken until the following day, Friday, September 28, 1905, at 10 o'clock a. m.

1496 FRIDAY, *September* 29, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon —— CROSBY, resumed the stand for the purpose of correcting his evidence as transcribed, having been duly sworn, testified as follows:

Mr. DAWES: If your Honor please, without interrupting the orderly procedure, your Honor will recollect that I called attention to certain discrepancies in the testimony as transcribed and the statements made by Mr. Crosby on the stand. He has indicated all of those and I do not think it will take over five minutes to correct them.

Direct examination by Mr. DAWES:

Q. In looking over your testimony you have indicated that you found some statements as transcribed which do not conform to your statements upon the witness stand. Be kind enough to point them out as quickly and briefly as possible.

A. At page 123 I am reported as having said, that the minimum weight on a 36-foot car is 32,000 pounds. It should be
1497 22,000.

Q. 22,000 pounds?

A. 22,000 pounds, yes sir. At page 130, on the question of rates on rags, the weight as stated is 60,000 pounds. It should be 50,000 pounds. At page 131 in regard to the approximate reduction; I am made to state that the reduction to our company would be $19,276.00. It should be $191,276.00. At page 141 in regard to the expenses of handling live stock at St. Paul, I am made to state that where the minimum charge of $10.00 for handling less than ten cars of range cattle,—it should be that the minimum charge is $10.00. It should be a minimum charge of $10.00. At page 148 in answer to the inquiry "Name the lines which compete from Nebraska City," I am made to state "The competition is mostly with the roads which can form a line from Omaha to Chicago." It should be, "The competi-

tion is with the Missouri Pacific, which can form a line by combination with any railroad from Omaha to Chicago." Page 154, in answer to the inquiry, "What amount of business moves on those roads to South Omaha," I am made to say, "There is a considerable distance moved." It should be, "There is a considerable movement." At page 156, in reply to the inquiry, "You ship from the Black Hills territory" and so forth, I am reported as saying, "No sir, the
1498 business that wants to come to Chicago has to go via Omaha." It should be, "The business that wants to go to Chicago direct does not have to go via Omaha." Page 157, the last inquiry on the page, I am made to say, that from Southwestern Missouri river points in the year 1905, there were shipped to and through the Mississippi river gate-ways, 808,067 of fresh meat and packing house products. It should be for the fiscal year ending June 30th, 1905, 808,067 tons of fresh meat and packing house product. Page 158 in answer to the inquiry "How much of each," after the figure 349,846, should come the word "tons" to indicate what is meant. Page 161, in answer to the inquiry, "So it did not embrace then the cattle rate, but it embraced the tonnage charge" etc., after the word "minimum," the word "even" should be stricken out and the sentence should read, "That is the minimum in case the actual rate was not greater." Page 163, in answer to the inquiry, "Now at Omaha and from such places you have a line," etc. After the figure 3783, it should read "Cars of packing house product and fresh meat." Page 175, the inquiry was in answer to Judge Baxter's question, etc. The answer as reported is "The packing house product and fresh meat comes to us practically an unknown quantity." It should read, "Comes to us practically as a known quantity." Page 183,
1499 the inquiry is "No, per car." And after I say, "That would only be $9,000.00, but if" etc., "thirty or forty or fifty" should be thousand dollars, to indicate what it refers to. Page 184, in answer to the inquiry, 'Well, in the case of Nebraska City, that is something that you have to pay." The answer as reported is, "We may have to pay but competition forces us to pay that." The answer should be, "We pay nothing at Nebraska City. At other points we do, but we have to pay it, competition forces us to." Page 193 the inquiry is, "Now, there is another proportional rate," etc. The question is, "Now ther- is another proportional rate that is shown up on live stock originating at the Missouri river destined to points east of the Indiana and Illinois state line. Do you know of any such shipment being made by way of Chicago?" The answer should be, "Yes, very frequently eastern packers or eastern buyers will go to the Missouri river and buy a certain class of live stock that will be shipped to territory east of the Indiana and Illinois state line or for export, and those rates based on the Missouri river." Page 195, "Now the proportional rate on dressed meat and packing house product of 18½ cents Missouri river to Chicago, is the rate on which most of the shipments are made, is it not?" The answer should be either that
1500 or 13½ cents to the Mississippi river when destined east of the Indiana and Illinois state line." Page 204, "What is the rate to St. Paul generally on class goods and commodities, to the Mis-

souri river from Chicago?" The answer should be, "The first class rate, for example, between Chicago and St. Paul is 60 cents between Chicago and the Missouri river, it is 80. There is no fixed relation between the two." Page 208, "I thought it to have been very well determined that the Missouri river basis of rates on wheat had been ultimately established as a primary rate," etc. The answer should be, "No the difference in the rate is only 3 cents. What is understood to be the normal proportional rate on wheat from the Missouri river to the Mississippi river is 9 cents and 12 cents to Chicago. Page 211, the last question. "All those rates" etc. The answer should be, "In reference to the Minneapolis & St. Louis railroad, for example, they do not compete for live stock although they do for the product." Page 212, "None of these roads compete for the live stock with each other?" The answer should be, "All of those routes compete, because they can form a through line with their connections but shippers prefer usually the direct route." Page 215, the answer to the last question on 214 should read, "Well, the fact of their being composed of several carriers does not alter the situation.

1501 Take the general adjustment of rates between the Missouri river and Chicago and territory west of the Missouri river, the through rates on the combination on the Missouri river, as a rule are less whether the lines are composed of half a dozen railroads, or whether it is only one, two or three." Page 216, "Has there ever been a time when the packing house rate was based on strawberries or *vice versa?*" The answer should be, "No, there are a great many rates not based on the packing house rates or the beef rates." Page 218, "What are the average earnings per ton per mile on all commodities including live stock?" The answer should be, "I have forgotten the figure, but I have since obtained it and it is eighty six one hundredths of one cent per ton per mile for the fiscal year ending June 30th, 1904." Page 276, the name of the station there should be "Villisca."

Mr. COWAN: I just want to inquire while you are on the stand if you have made up the statement of the train consists.

A. That has not been completed yet.

Q. When will it be completed?

A. I think it will be completed in a very few days.

Q. When it is completed I would like you to bring it and the train conductors' reports for examination in connection with it, so we can have it for examination

1501*a* GEN. EX. 9.

Statement to be Added to Testimony of Mr. Crosby.

The Chicago, Burlington & Quincy Railway Company has kept a record of the time consumed in the transportation of live stock; that is, the time consumed by all trains carrying live stock from and through St. Paul to Chicago, from January first up to date, which record shows an average of the time consumed, the average speed per hour of the trains for each day, with a statement showing the number

of cars of live stock in each train, and the average number of cars per train. The record shows that in only four or five instances, did the average speed run lower than fifteen miles per hour, and in no case more than thirty one miles per hour, with an average of seventeen miles per hour for the entire time, and of all trains.

The average number of cars of live stock per train was twenty-five. There were other cars of both dead freight and empties in many of the trains, but a statement thereof is not shown. The average gross tonnage handled per train was estimated at 1023 tons.

The average slow freight rating of the engines used in this service is rated at 1640 gross tons.

The percentage of the gross tons handled, to the slow freight rating, 62.38 per cent.

There is no record which covers strictly east of the Missouri River movement, but there is a record showing the speed in a similar manner during the same period, of all trains carrying live stock from the range country in South Dakota, Wyoming, Montana and western Nebraska.

This shows a greater variation in the time and in speed made, which is necessarily due to the longer distance hauled and
1501*b* the varying grades of the different divisions of the road and great variety of equipment and freight carried.

This record shows average number of cars of stock per train 23, average gross tons handled per train 1279, averaged rating for engines on basis of slow freight tonnage, 1664 tons, percentage of gross tons handled to slow freight rating, 76.88 per cent. general average of miles per hour, 17.9.

These averages are made for the days, and the averages per train on different divisions show that over some divisions, train ran 12 or 14 miles per hour, and over another division, 25 miles per hour, and even in one or two instances, over 31 miles per hour, but the general average is as stated.

The records of the Chicago, Burlington & Quincy Railway Company, show that during the calendar years 1903 and 1904, that railroad handled 253,660 cars of live stock and that it paid claims incident to this business, amounting to $99,436.15, making an average of thirty nine and two tenths cents per car. From the records of same railroad during the calendar years 1903 and 1904, it handled 66,227 car- of dressed beef and packing house products, and that Company paid claim- incident to this business during the same period, amounting to $45,836.72 making an average of seventy-three cents per car.

The amount paid for loss and damage to fresh meat and packing house products, was divided as between the lines east and west of the Missouri River, as follows:

Lines East of the Missouri River	$40,836.40
Lines West of the Missouri River	5,000.32
	$45,836.72

The amount paid for loss and damage to live stock, was divided as follows:

1501c	Lines East of the Missouri River	$77,514.66
	Lines West of the Missouri River	21,921.49
		$99,436.15

The loading by cars of live stock is divided as follows:

	(1903)	(1904)
On lines West of the Missouri River	45,776	46,949
On lines East of the Missouri River	76,771	84,164
	122,547	131,113

The showing as to total number of cars of live stock is not absolutely correct, for the reason that when shipments cross the Missouri River via the various Markets, they are not counted twice, once as being loaded into Missouri River, and counted again when forwarded east. It is impossible to say to what extent this is done, without making and exhaustive analysis of the business. This fact would increase to some extent the average amounts per car for damages on live stock shipments.

Attached hereto are copies of several Conductors' reports taken at random, showing the consist of the trains handled by them. These reports show gross weight of cars and contents, also weight of freight. Some Conductors in making reports showing live stock, have used estimated gross weight of thirty tons per car, which is really in excess of what it should be, as cars and contents would not average over twenty five tons, but this is against the Company for the reason that it shows we are hauling a greater tonnage than we really are, and the engine is not hauling as great tonnage as it should; as illustrated in case of train No. 90 of October 13th, 1904, Conductor Swain: he reports 26 cars of live stock at thirty
1501d tons each. Weight should be 25 tons, difference of 130 tons between tonnage as reported and actually hauled, which shows a still greater failure to approach the engine rating.

(Endorsed:) Filed Oct., 14, 1905, Marshall E. Sampsell, Clerk.

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Burlington Route

Form 2108.

REPORT OF CARS IN TRAIN NO. 74 E4

VIA

X LEAVING Ottumwa AT 12 05 P M 4/13 1905

X ARRIVING Galesburg AT 9 P M 4/13 1905

1501 2

ENGINES	NUMBERS	FROM	TO	ENGINEERS
G	97	780	706	Sutherland
	1912	—	163	Benson

Brakemen: R Brown, F E Barton

Conductor: W P Kilpatrick

KIND / WAY	ALL CARS EXCEPT AT RIGHT — INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS — CONTENTS	WEIGHT IN TONS — FREIGHT		MOVEMENTS — FROM	MOVEMENTS — TO	CONTENTS — X FOR EMPTIES	BILLED FROM	FINAL DESTINATION	REMARKS
B			140756	B	10	1	1	—	—	Sprd		Gl	
-			150285	B	14	1	1	—	—	Sprd		Gl	
-			274332	-	30	13	3	—	—	Castle		W Hyde	
-			627444	-	30	13	3	-	-	Sprd		Gl	
-			615734	-	30	13	4	-	-	Eggs		W Hyde	
-			1478?	-	16	9	5	-	-				
-	Ua Pac	61356		-	30	13	6	-	-	Brick		"	Ind Harbor
-	"	61315		-	30	13	7	-	-	"		"	" "
-	"	61433		-	30	13	8	-	-	"		"	" "
-	"	61918		-	30	13	9	-	-	"		"	" "
B			796533	B	46	20	10	-	-	Cobbles		Gl	
F	A&T	53		F	28	23	11	-	-	Gluey		W Hyde	
F	ARK	62033		-	28	15	13	-	-	Meat		"	
-	"	57733		-	28	15	13	-	-	"		"	
B	C M & St P	66693		B	32	16	14	-	-	Hides		"	
F	N C	72641		F	32	14	15	-	-	Meat		Gl	Ind Hr
-			389044	-	31	11	16	-	-	Butter		"	
B	C M & St P	44183		B	36	18	17	-	206	Mixed		"	
-	M & St L	60979		-	30	15	18	-	-	"		"	
F			291444	F	26	13	19	-	163	Eggs		W Hyde	
-	Ind Kans	60721		-	30	13	20	-	-	"		"	
-	Ill Cent	54886		-	30	10	21	-	-			Gl	
B	C M & St P	44144		B	36	18	22	-	206	Mixed		"	
B	Erie	99184		-	53	36	23	-	-	Silos		"	
-	C B & Q	22957		-	50	33	24	-	-	Wheat		"	
B			233251	B	36	14	25	-	163	Eggs		"	
-	Ark	6220			30	11	26	-	-			"	
-		22			30	11	27	-	-			"	
B	SP	58411		B	48	31	28	-	-	Sash		"	
-	"	70714		-	52	33	29	-	-	Doors		"	
F	M & St L	518		F	26	11	30	-	-	Meat		"	
-	ARK	45855		-	32	14	31	-	-			SJJ	
-		24665		-	40	17	32	-	-			"	
-	M & St L	11122		-	26	12	33	-	-	Stockyds		"	See Gl
-	ARK	86300		-	36	13	34	-	-	Meat		"	
-	M & St L	518		-	32	14	35	-	-	"		"	
-	M & St L	14055		-	31	11	36	-	-	Pipe		"	
-	ARK	2217		-	32	10	37	-	-			"	
-	N C	73411		-	33	10	38	-	-	Meat		13	
-	ARK	78277		-	35	15	39	-	-	Eggs		"	
B	Can	91112			15		40	-	-	X		Gl	

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Tr No _____ Date _____ 190 _____ 15018 Conductor.

Kind	All Cars Except at Right: Initials	Numbers	C. B. & Q. Numbers	Kind of Billing	Tonnage: Gross	Tonnage: Fr'gt		Movements: From	Movements: To	Contents: X For Empties	Contents: Fr'gt Det. Billed From	Destination	Remarks
T	Cons	44189		L	48	35	41	280	163	Scrap	0		
B	Sou Rem	22249		E	34	22	42	–	–	Lead	3200		
–		30101		L	35	20	43	–	–	Feed	–		
–			26093	E	27	13	44	–	–	Hides	1800		
–			95816	–	48	30	45	–	–	C Meal	1805		
R	ARL	8701		T	23	9	46	–	–	Meat	131		
F	LSMS D	36303		L	26	12	47	–	206	Grader	37		
B	Gn	73052			15		48	–	–	X	3296		
–		30660			17		49	–	–	X	–		
–	Sa Cent	02288		L	43	28	50	–	–	Corn	3200		
–			27735	–	47	22	51	–	206	–	206		
–			31364		14		52	–	–	X			
–			96754		19		53	–	–	X			
–			95176	E	29	10	54	–	–	Tiss	CR Tot		
–	Ny Ch R	58107		T	25	15	55	–	–	Mds	206		
–	SCS Sol	9512			14		56	–	–	X	–		
–	BRP	2021			14		57	–	–	X	–		
–			1852	E	38	22	58	–	163	Wheat	1800		
–	Sil Sw	10716		L	45	30	59	–	206	Corn	0		
S			62055	S	30	13	60	256	163	Cattle	2753		
–			66176	–	30	13	61	–	–	–	–		
–			15233	–	25	11	62	262	179	–	3370		
–			16970	–	25	11	63	–	–	–	–		
–			68392	–	30	13	64	233	163	Hogs	Usy		
–			65509	–	30	13	65	225	–	Hogs	–		Feed Gr
–			61333	–	30	13	66	215	–	Hogs	0		
R	MDT	9371		T	26	6	67	206	–	Eggs	333		
–	SRL	10951		–	25	5	68	–	–	–	–		
B			92193	–	26	8	69	–	–	Mds	0		
R			39322	–	23	3	70	–	–	–	–		
–	Eur	61085		–	30	10	71	–	–	Eggs	–		
B			18703	–	30	14	72	–	–	–	13		
S	SSE	60136		S	30	12	73	–	–	Hogs	–		
–	Sor C	1839		–	30	13	74	–	–	Cattle	Usy		
–			66246	–	30	13	75	–	–	Hogs	–		
–			62438	–	30	13	76	–	–	Cattle	–		
–			65381	–	30	13	77	–	–	Hogs	–		
–	Sa Ct	06398		–	30	13	78	179	–	–	–		
–	–	06432		–	30	13	79	–	–	–	–		
							80						
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Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Burlington Route

F 11.05 300M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

1501y

LEAVING Onelow AT 7:10 P M 4-3 1905

ARRIVING Otta AT 12:55 A M 4-4 1905

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1984	393	280	Campbell

C H Sutton
C E Mowery
Brakemen.

H L Lewis
Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS FR'GHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14588		23			393	280				
Q	CGW	1710		F	24	12	1	–	–	Mdse		206	14-30=1402
–	OTS	20881		–	24	12	2	–	–	–		280	14-20=1060
–	MrO	5679		G	34	21	3	–	371	Corn		0	
–			4698	–	31	20	4	–	–	–		–	
–			10773	–	33	21	5	–	–	–		–	
–			1435	–	33	21	6	–	–	–		–	
–			4789	G	27	16	7	–	–	–		–	
–			9937	–	34	21	8	–	–	–		–	
–	KC	1276		–	27	16	9	–	–	–		–	
–	MKT	1362		–	53	33	10	–	–	–		–	air
–			18474	G	34	21	11	–	–	Wheat		–	
–			26621	–	46	32	12	–	–	Corn		–	
S			60164	–	30	11	13	–	280	Hogs		US yds	
–			62949	–	30	11	14	–	–	–		–	
–			60998	G	30	11	15	–	–	–		–	
–			15104	–	25	11	16	–	–	–		–	
–			62690	–	30	11	17	–	–	–		280	
–			16327	–	25	11	18	–	–	–		–	
–			52044	G	30	11	19	–	–	Sheep		0	
–			75679	–	30	11	20	–	–	–		–	
–			52081	–	30	11	21	–	–	–		–	
–			50020	–	30	11	22	–	–	–		–	
–			52093	G	30	11	23	–	–	Hogs		Kankakee	
–			50135	–	30	11	24	–	–	–		–	
–			15212	–	25	11	25	–	–	–		US yds	
–			16111	–	25	11	26	–	–	–		–	
R			39203	F	31	12	27	–	–	Butter		0	
–	ARL	8765		–	34	11	28	–	–	Meat		Kankakee	
–	–	7795		–	33	10	29	–	–	–		–	
–	–	9697		–	34	11	30	–	–	–		–	
–	NCLC	7047		–	33	10	31	–	–	–		Hammond	
–	ARL	3426		F	34	11	32	–	–	–		Kankakee	
–	–	8060		–	35	12	33	–	–	–		–	
–	–	7335		–	34	11	34	–	–	–		–	
–	–	7215		–	33	10	35	–	–	–		–	
–	–	13085		–	33	11	36	–	–	–		–	
–	FRL	0150		F	33	10	37	–	–	–		Hammond	
–	NCLC	7396		–	33	10	38	–	–	–		–	
–	FRL	0948		–	34	11	39	–	–	–		–	
–	NCL	7812		–	33	10	40	–	–	–		–	

Dram in Charge
Kay Lawrence Kl at Demuth Crossing (Stamped)

Patented May 5th, 1903

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Tra' No _____ Date 4-3 1905 St Louis 1501 R Conductor.

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF CLASS	TONNAGE GROSS	TONNAGE PT SET		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
X	T.C.C.	7775		F	32	0	41	Sta 9	250	Wat		Kansas City	
"	"	7443		"	29	10	42	"	"	"		"	"
"	"	7139		"	30	3	43	"	"	"		"	"
"	"	4607		"	33	10	44	"	"	"		Faucher	"
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Patented May 8th, 1900. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1087

Burlington Route

F 11.05 200M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

LEAVING Creston AT 7 28 P M Apl 5 1905

ARRIVING Ottumwa AT 11 48 P M Apl 5 1905

1501

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1987	393	280	A Hart

J H Ketcham

J E Miller — Brakeman.

C J Strong — Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT: INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS: GROSS	FRIGHT		MOVEMENTS: FROM	TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14599					393	280				
Q			23077	J	20	6	1	-	-	Mdse		206	
-	C G W	7146		-	16	3	2	-	-	-		280	
-			29509	-	24	9	3	-	-	-		296	
-	C M & St P	40424		E	33	15	4	-	-	Trees		Waterloo Wis	
-			27762	-	45	30	5	-	-	Goats		0	
R			39231	J	31	11	6	-	-	Eggs		-	13-27-1251
			39426	-	31	11	7	-	-	-		-	
-	C St P M & O	8104		-	26	7	8	-	-	Mdse		-	
-	M D T	11426		-	30	10	9	-	-	Dr Poultry			
-	A R L	4022		-	38	15	10	-	-	Meat		KK Kee	
-	-	7790		-	35	12	11	-	-	-		-	
-	-	9669		-	34	14	12	-	-	-		-	
-	-	8650		-	32	9	13	-	-	-		Quincy	
-	-	8055		-	34	11	14	-	-	-		KK Kee	
-	-	6992		-	26	3	15	-	-	-		206	
-	-	9310		-	30	7	16	-	-	-		163	
-	P D S	2321		-	43	20	17	-	-	-		Hammond	
-	N C L C	9247		-	34	11	18	-	-	-		-	
-	-	7571		-	33	10	19	-	-	-		-	
-	H R L	01137		-	33	10	20	-	-	-		-	
-	-	01171		-	34	11	21	-	-	-		KK Kee	
-	A R L	8730		-	33	10	22	-	-	-		-	
-	-	8363		-	33	10	23	-	-	-		-	
-	-	9967		-	34	11	24	-	-	-		-	
-	-	13144		-	34	11	25	-	-	-		-	
-			39204	-	34	12	26	-	-	Eggs		0	
-	N Y D L	13589		-	31	11	27	-	-	-		Hammond	
S	Mather	1218		S	30	13	28	-	-	Cattle		US Yds	
-			75584	-	30	13	29	-	-	Sheep		-	
-			50281	-	30	13	30	-	-	-		-	
-			50091	-	30	13	31	-	-	-		-	
-			52019	-	30	13	32	-	-	-		-	
-			50300	-	30	13	33	-	-	-		-	
-			52108	-	30	13	34	-	-	-		-	
-			75799	-	30	13	35	-	-	-		-	
-			50174	-	30	13	36	-	-	-		-	
-			52084	-	30	13	37	-	-	-		-	
-			52098	-	30	13	38	-	-	-		-	
-			52142	-	30	13	39	-	-	-		-	
-			50233	-	30	13	40	-	-	-		-	

Patented May 5th, 1902.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Burlington Route

F11 05 200M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

LEAVING Galesburg AT 845 A M 10-7 1905

ARRIVING Chicago AT 545 P M 10-7 1905

1501 j

ENGINES	NUMBERS	FROM	TO	ENGINEERS
H & J	581	163	37	Chitty
Q	1916	163	4	Pearsons

D H Dratty
W A Bates
Brakemen.

J M Burke
Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT: INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS: GROSS	FR'GHT		MOVEMENTS FROM 163	TO 4	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14537										
F			89096		14		1	✓	37	X			
✓	C I & L	11942			12		2	✓	✓	X			
✓	D L W	37057		J	32	17	3	—	—		Flour		N Y N K
F			89317		14		4	—	—	X			
✓		19361		D	30	17	5	—	—		Lyon		Chgo
B			21434	✓	29	17	6	—	83		Plaster		Mendota
✓	G T	8561		T	30	11	7	—	—		Wagons		3249
✓			24939	✓	21	6	8	—	—		Mdse		83
✓			4756	J	34	20	9	—			Hides		Chgo
✓	H & J	10003		D	36	20	10	—	—		Seed		P Whole
✓	C & W	36990		✓	35	20	11	—	—		—		
✓			20239	✓	33	20	12	—	—		Rye		Chgo
✓	No Pac	36191		✓	49	34	13	—	—		Wheat		
✓			27071	J	29	14	14	—	—		Lime		T E I
R	S R L	661		✓	31	11	15	—	—		Meat		Chgo
B	H & J	10233		D	31	13	16	—	—		Stoves		Can Pac
✓	G T	3794		✓	16	2	17	—	—		Cstgs		G T Ry
✓			95423	J	43	25	18	—	—		Hides		Erie
✓			29477	✓	32	17	19	—	—		Flour		Pen Co
R			39186	✓	33	11	20	—	—		Meat		U S Y
B			29407	D	35	20	21	—	—		Wheat		Chgo
R			93779	✓	35	20	22	—	—		—		
✓	C B T C	2078		J	30	10	23	—	—		Meat		B & O
✓	N C L	4536		✓	33	13	24	—	—		—		U S Y
B	L S M S	D 24692		✓	32	16	25	—	—		Mdse		Chgo
✓	G T	12351		✓	28	10	26	—	—		—		—
✓			10766	✓	23	8	27	—	—		—		—
R	P D S	1223		✓	30	10	28	—	—		Meat		U S Y
✓	A R L	9644		✓	31	11	29	—	—		—		—
✓	✓	9605		✓	31	11	30	—	—		—		—
✓	H R L	0262		✓	30	10	31	—	—		—		—
✓	N C L	4515		✓	30	10	32	—	—		—		—
B	H & J	7319		D	45	20	33	—	—		Wheat		Chgo
R			38209	J	30	8	34	—	—		Mdse		—
✓	A R C C C	8064		✓	33	11	35	—	—		Meat		U S Y
B			60243	S	30	30	36	—	—		Hoses		Pa C
R			38200	T	33	11	37	—	—		Meat		U S Y
✓			39057	✓	33	11	38	—	—		—		—
✓			39320	✓	33	11	39	—	—		—		—
✓			39284	✓	26	5	40	—	—		Mdse		Chgo

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Train No. _____ Date Dec 11 1904 J M Burks 1501 R Conductor.

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	TONNAGE GROSS	TONNAGE FREIGHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
F	Wil L	18435		F	24	4	41	Ind	Chgo			Chgo	
-	-	-	37450	-	29	6	42	-	-			-	
B	Bur	70767		D	45	28	43	-	-			-	
-	Sil L	43254		-	49	30	44	-	27			Aurora	
L			32900	-	43	27	45	-	-			Oakford	
-			41511	-	40	20	46	-	-			Medill	
-	Van Zane	76877		D	26	9	47	-	-			Cayuga	
I	W L	27999		-	15		48	-	-	X		B & Q	
R			92963	-	25		49	-	-			Oakford	
R	Ill 6	26275		I	30	10	50	-	13			Mak	Chgo
B			9335		30		51	-	37	X		Dyera	
-	Erm	27063		D	40	23	52	83	-			Oakford	
-	CRI N J	33651		-	40	25	53	-	-			Aurora	
C			80349	-	73		54	-	-			Coal	1462
C	Rock	5216		-	45		55	-	-			-	
Q			29590	-	22	17	56	-	-			Ottpe	1498
S	W L	76990			45		57	-	-	X		B & Q	
R	Lm	96688		D	27	15	58	-	-			Chg	Oakford
-			29794	-	25	10	59	-	-			Strand	
-			21661	-	30	15	60	-	-			Stony	Aurora
C	Ill 6	93426		-	58	43	61	-	-			Coal	-
C	-	94601		-	58	40	62	-	-			-	-
R	W L	43188		-	15		63	-	13	X			C J
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Patented May 8th, 1900. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

8 Burlington Route

F11 05 200M

REPORT OF CARS IN TRAIN NO. 90

VIA

Form 2108.

LEAVING Galesburg AT 9 30 P M Feb 12 1904

ARRIVING Chicago AT 8 30 A M — 14 1904

1501 C

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1931	163	4	Ludwig

J N Cram

J D Gullstrand — Brakemen.

C H Swain — Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS FR'GHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14501					163	4				
S			62037	S	30	13	1	—	52	Cattle		52	
-	QOKC	1721		-	30	13	2	—	—	—		—	
-			61745	-	30	13	3	—	4	Hogs		US Hog	
-			17711	-	25	11	4	—	—	—		—	
-			61539	-	30	13	5	—	—	Cattle		—	
-			15277	-	25	11	6	—	—	—		—	
-			16220	-	25	11	7	—	—	—		—	
-			65012	-	30	13	8	—	—	—		—	
-			65722	-	30	13	9	—	—	—		—	
-			62063	-	30	13	10	—	—	—		—	
-			65099	-	30	13	11	—	—	Hogs		—	
-			66257	-	30	13	12	—	—	Cattle		—	
-			62502	-	30	13	13	—	—	—		—	
-	MSE	12363		-	30	13	14	—	—	—		—	
-	DSE	1558		-	30	13	15	—	—	—		—	
-			65531	-	30	13	16	—	—	—		—	
-			66167	-	30	13	17	—	—	—		—	
-			66228	-	30	13	18	—	—	—		—	
-			62552	-	30	13	19	—	—	—		—	
-			62817	-	30	13	20	—	—	—		—	
-			15442	-	25	11	21	—	—	Hogs		—	
-			16840	-	25	11	22	—	—	—		—	
-			62851	-	30	13	23	—	—	—		—	
-			61790	-	30	13	24	—	—	—		—	
-			65184	-	30	13	25	—	—	—		—	
-	MSE	16066		-	30	13	26	—	—	—		—	
-			60073	-	30	13	27	—	—	Cattle		—	
-			15201	-	25	11	28	—	—	Hogs		—	
-		839	2	-	25	11	29	—	—	—		—	
-			15047	-	25	11	30	—	—	—		—	
-			15559	-	25	11	31	—	—	—		—	
-			62284	-	30	13	32	—	7	—		0	Omaha P Co
-			65170	-	30	13	33	—	—	—		—	
T	UTL	5398		D	15		34	—	—	X		—	
B			23823	-	34	20	35	—	—	Paper		—	
-			27740		15		36	—	—	X			
-			27891		15		37	—	—	X			
-			23305		15		38	—	—	X			
-			29057	D	37	22	39	—	—	Lumb		0	
-	CBS	61460		-	33	38	40	—	—	Cement		—	

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

9 Trr' No _____ Date Oct 13 1904 P H Swan 1501m Conductor.

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	TONNAGE GROSS	TONNAGE FRIGHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X	CONTENTS FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
T	UTL	1535		W	15		41	163	7	X			0	
B	MRT	7533		-	24	10	42	-	95		Hay		-	
C	M&O	13791		-	50	35	43	-	7		Lumber		-	
B			21754		15		44	-	-	X				
-			29712		15		45	-	-	X				
-			28378		15		46	-	-	X				
S			16603	S	25	11	47	7	4		Hogs		USY	
-	CCCC	376		-	30	13	48	-	-		Cattle		"	
-	SWS	2427		-	30	13	49	-	-		-		-	
-			15564	-	25	11	50	-	-		-		-	
							51							
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Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1092

10 Burlington Route — F 11-05 200M

REPORT OF CARS IN TRAIN NO. 6 Form 2108.

VIA ASY 1

LEAVING Galesburg AT 6 30 P M 10/8 1904

ARRIVING Chicago AT 7 30 A M 10/9 1904

1501 W

ENGINES	NUMBERS	FROM	TO	ENGINEERS
6	1929	163	4	W Ellis

Brakemen: A B Lodge, C A Trial

Conductor: C E Smith

KIND / WAY	ALL CARS EXCEPT AT RIGHT — INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS — GROSS	NET		MOVEMENTS — FROM	TO	CONTENTS — X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
			140114					163	4				
10			290258	L	40		1			Cattle		Chicago	
6			85937	-	57		2			Coal		-	
10	MKT	41275		-	36		3			Cattle		-	
10	M-N	60998		-	43		4			Oats		-	
-			273581	-	43		5			Brick		-	
6			869756	-	59		6					-	
10		10 x 86		-	44		7		117			-	
-			393738	-	45		8		4			-	
-	D S A	36651			16		9			X		-	
-	CM	427220		L	51		10			Feed		-	
1	UPL	87156			16		11			X		-	
10		99900			16		12			X		-	
10	Sa e	081886		L	33		13			Hay		-	
-	-	048900		-	36		14					-	
-	-	019644		-	40		15			Oats		-	
-			347440	-	46		16			Barley		-	
-			240341	-	46		17			Feed		-	
10	CCCSL	3538		-	45		18			Seed		-	
10			192216	-	25		19			Sand		-	
-			772940				20						
-	CCCSL	96809					21						
10			982215	S	33		22	163	7	Meat		Ushy	
10			207216	L	36		23			Bran		-	
1	UPL	61622		L	33		24			Sand		Ushy	
10			381492	-	33		25			Meat		-	
-			348240	L	33		26			Wheat		.0	
-			349246	-	46		27					-	
-			304024	-	45		28					-	
-			277465	-	46		29					-	
3			615337	S	30		30		4	Cattle		Ushy	Ans. Ushy
-			616011	-	-		31					-	
-			662869	-	-		32					-	
-			617310	-	-		33					-	
-			606447	-	-		34					-	
-			658644	-	-		35					-	
-			661775	-	-		36					-	
-			616633	-	-		37					-	
10	ARL	8359		L	33		38			D Mail Car		Ft Dutch	
5	ARL	77641		-	21		39		37	Empty		Ushy 37 Chgo	
5	ARL	17900		S	30		40		7	Mules		Ushy	Ans. Ushy

Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Train No _____ Date Oct 8 190 4 C E Smith Conductor. 15010

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	CONTENTS LOADED	CONTENTS EMPTY		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
S	GN	12000		S	25		41	163	7	Hgrain		USY	
H		64558		H	23		42	–	–	Feed		a	
LO	LOT	760		LO	30		43	–	–	Coalley		–	
R	MOP	106946		R	28		44	–	–	Bbl		–	
Ms	CMW	89776		–	16		45	–	–	Whisk		–	
–	LO	80373		–	23		46	–	–			–	
R	FYE	18429		–	36		47	–	–	Oranges		–	
LO	LOF	5466		LO	31		48	–	–	Coalley		–	
R			387655	R	27		49	–	–	Bbl		–	
USY			765714	S	30		50	–	67	Stock		USY	
–			620736	–	30		51	–	–	–		–	
–			620831	–	30		52	–	–	–		–	
–			60294	–	30		53	–	–	–		–	
–			620736	–	30		54	–	–	–		–	
–			601233	–	30		55	–	–	–		–	
S			616738	–	30		56	–	7	Horses		–	
–			154869	–	25		57	–	–	Hogs &		–	
–			617833	–	30		58	–	–	Cattle		–	
–			628016	–	30		59	–	–	–		–	
–			164097	–	25		60	83	–	Horses		–	
–			628100	–	30		61	–	–	–		0	
							62						
							63						
							64						
							65						
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Patented May 8th, 1900.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1094

Burlington Route

F 11-05 200M

REPORT OF CARS IN TRAIN NO. 74

VIA

Form 2108.

LEAVING Quincy AT 11 A M 10-6 1904 1501 p

ARRIVING Galesburg AT 5 30 P M 10-6 1904

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1739	2900	163	Parson
–	1927	2900	163	Pierson

Martin
Westphal
Brakemen.

O O Arnold
Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	FR'GHT		MOVEMENTS FROM	TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14601					2900	163				
R	MRT	4125		D	35		1	–	–	Kegs		Q	
T	SvL	6103		J	32		2	–	–	Tallow		USY	
R	MDT	10593		–	30		3	–	–	Eggs		888	
–	BCSS	360		–	34		4	–	–	Meat		USY	
–			38278	–	33		5	–	–	–		–	
–			38093	–	34		6	–	–	–		–	
–	MRD	1746		–	36		7	–	–	–		13	
–		1800		–	32		8	–	–	–		USY	
–			39352	–	36		9	–	–	–		–	
–			39420	–	37		10	–	–	–		–	
–			39470	–	34		11	–	–	–		–	
T	SvL	6034		–	32		12	–	–	Lard		–	
L			62539	–	30		13	–	–	Mules		–	
–			61669	–	30		14	–	–	Cattle		1408	
–			65534	–	30		15	–	–	–		–	
–	MHC	60619			30		16	–	–	–		–	
–	MSC	16371					17	–	–	–		–	
–			61067		30		18	–	–	–		–	
B			33941	D	30		19	–	–	Spelter		131	
R			38195	J	31		20	–	–	Meat		USY	
B	UP	67590		X	40		21	–	–	Flour		Q	
–			21061	X	30		22	–	–	–		37	
–	SuC	22223		X	48		23	–	–	–		–	
R	ANL	8836		J	32		24	–	–	Poultry		JJJ	via 95
L			66313		30		25	–	2828	Cattle		3370	
–			65211		30		26	–	–	–		–	
–			62703		30		27	–	–	–		–	
C			84652		20		28	–	–	X			
–			84413		20		29	–	–	X			
B	UP	68006		D	38		30	–	2839	Flour		2839	
J	UTL	5265			15		31	–	163	X		0	
–	–	8587			15		32	–	–	X		–	
–	–	4500			15		33	–	–	X		–	
–	–	4053			15		34	–	–	X		–	
							35						
							36						
							37						
							38						
							39						
							40						

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1095

Burlington Route

F11 /5 200M

REPORT OF CARS IN TRAIN NO. Ex 1/76 Form 2108.

VIA

LEAVING Hamburg AT 10 55 A M 10-12 1904 15018

ARRIVING Creston AT 4 30 P M 10-12 1904

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1166	8142	444	Kirtt
–	1756	444	393	A Johnson

Kirkinbaugh
W J Booty
Brakeman.

J M Jay
Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS FR'GHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14035					8142	393				
S			66441		30		1	–	–	Cattle		Hammond	
–			65122		30		2	–	–	–		–	
–			66011		30		3	–	–	–		–	
–			61239		30		4	–	–	–		–	
–			60039		30		5	–	–	–		–	
–			60229		30		6	–	–	–		–	
–			65043		30		7	–	–	–		–	
–			61373		30		8	–	–	–		–	
–			66083		30		9	–	–	–		–	
–			65069		30		10	–	–	–		–	
–			65267		30		11	–	–	–		–	
–			62232		30		12	–	–	–		–	
–			60097		30		13	–	–	–		–	
–			61030		30		14	–	–	–		–	
–			65501		30		15	–	–	–		–	
–	QOKC	1746			30		16	–	–	–		–	
–			66366		30		17	–	–	–		–	
–			66025		30		18	–	–	–		–	
–			61865		30		19	–	–	–		–	
–			62587		30		20	–	–	–		–	
–			62724		30		21	–	–	–		–	
–			65246		30		22	–	–	–		–	
–			61147		30		23	–	–	–		–	
–			61842		30		24	–	–	–		–	
–	Hicks	1713			30		25	–	–	–		–	
–			66415		30		26	–	–	–		–	
–			62440		30		27	–	–	–		–	
–			61222		30		28	–	–	–		–	
–	QOKC	1644			30		29	–	–	–		–	
–		~~1644~~	65487		30		30	–	–	–		–	
–			65687		30		31	–	–	–		–	
–			60234		30		32	–	–	–		–	
–			65063		30		33	–	–	–		–	
–			61437		30		34	–	–	–		–	
–			62152		30		35	–	–	–		–	
–			66368		30		36	–	–	–		–	
–			~~62950~~				37						Badower
–			61159		30		38	8142	393	Cattle		Hammond	
–			62501		30		39	–	–	–		–	
–			62076		30		40	–	–	–		–	

Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1096

Burlington Route

F 11-05 200M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

LEAVING Ju Jayaha AT 12 05 P M 10-10 1904 1501N

ARRIVING Creston AT 6 P M 10-10 1904

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1536	a 20	393	J Hawkes
–	1604	478	–	Diffenbaugh

W Wilson
C E Wood
Brakeman.

T Allen
Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT: INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS: LOAD	WEIGHT IN TONS: FR'GHT		MOVEMENTS: FROM	MOVEMENTS: TO	CONTENTS: X FOR EMPTIES	~~BILLED FROM~~	Final DESTINATION	REMARKS
			212					a 20	393				
B			954		11		1	–	478	X			
–			11506		11		2	–	–	X			
C			87237		15		3	–	–	X			
–		2393			10		4	–	–	X			
–			17176		10		5	–	–	X			
–			7729		10		6	–	–	X			
–	QOKC	5061			13		7	–	–	X			
R	FGE	17453		J	30		8	–	393	Apples		Chicago	
–		17886			39		9	–	478	Oranges			C.B.-Cmbd
B			23805	–	28		10	–	393	Crude		Minneapolis	
–	MDT Co	8010		–	26		11	–	393	Mdse		Chicago	
–			31892	–	21		12	–	–	–		–	
–	CNA	8978		–	26		13	–	–	Hops		–	
–	Nor Pac	57156		–	36		14	–	–	Oleomar		Rock Isld	
S			62635	S	30		15	–	–	Horses		Hunterdon [illegible]	[illegible]
R	ARL	9250		J	31		16	–	–	Meat		US Yds	Alex
–	HRL	6962		–	31		17	–	–	–		–	apls
–		01184		–	31		18	–	–				
–	CRL	3482		–	35		19	–	–	–		Kankakee	C C
–	–	3088		–	33		20	–	–	–		–	–
–	–	3778		–	33		21	–	–	–		–	–
–	–	3041		–	33		22	–	–	–		–	–
–	–	3177		–	33		23	–	–	–		–	–
–		6558		–	35		24	–	–	–		US Yds	A Co
–	SRL	10557		–	32		25	–	–	–		Pomeroy	S C
–	CRL	3641		–	33		26	–	–	–		Kankakee	C C
–	–	3344		–	31		27	–	–	–		–	–
–	–	3462		–	31		28	–	–	–		–	–
–	–	3601		–	34		29	–	–	–		–	–
–	–	3171		–	34		30	–	–	–		–	–
–	–	3889		–	31		31	–	–	–		–	–
–	–	3493		–	35		32	–	–	–		–	–
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							38						
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							40						

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1097

Burlington Route

F11 05 200M

Form 2108.

REPORT OF CARS IN TRAIN NO. X

VIA

LEAVING Ottumwa AT 9:55 P M Oct 8 1901

ARRIVING Galesburg AT 3:55 P M Oct 9 1901

1501

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1931	380	163	Fenlaw

W H Eastman — Brakeman.

H C Fox

G E Tracey — Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS TARE		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	BILLED DESTINATION	REMARKS
			14533					380	163				
W			20371	J	34	10	1	—	—			Mdsn	
"	WABC	8685		9	18		2	—	206	X		2753	
"			134666	-	33	20	3	—	—			Wheat	3200 Reduce
"	Erie	88999		-	15		4	—	—	X		C	0
"			20081	-	15	30	5	—	—			Corn	3200
"			9386	-	41	26	6	—	—			Wheat	0
"			71207	-	40	26	7	—	—			Corn	0
W			42401	-	19		8	—	—	X			163
W			19969	-	33	20	9	—	—			Corn	0
C	Wabash	5198		-	15		10	—	—	X			38
W			78777	-	46	31	11	—	—			Corn	0
"	C&W	1534		-	45	30	12	—	—			"	"
"	NYCH	58791		-	44	30	13	—	—			"	"
C	NKS	4a198		J	26	6	14	—	163			Mdse	163
"	SFRd	8730		-	33	19	15	—	—			Oranges	0
"			38076	-	38	18	16	—	—			Lard	3200
"	ANDG	10824		-	38	18	17	—	—			"	"
"			38064	-	38	18	18	—	—			"	0
"			31206	-	29	19	19	—	—			"	3200
"			99323	-	34	10	20	—	—			Mdse	"
"	MKT	5724		-	37	17	21	—	—			Lard	WDY
"	"	5803		-	37	19	22	—	—			"	"
"		5518		-	38	18	23	—	—			"	"
"	MKnH	6023		-	34	12	24	—	—			Mdse	222 Ref
"			38306	-	36	14	25	—	—			"	"
S			67113	S	30	11	26	—	—			Hogs	WDY
"			61376	-	30	11	27	—	—			"	"
"			17876	-	25	9	28	—	—			"	"
"			61225	-	30	11	29	—	—			"	"
"			62875	-	30	11	30	—	—			"	"
W			95714	-	30	11	31	—	—			Empty	180
S			62880	-	30	11	32	—	—			Hogs	WDY Reg F
"			61905	-	30	11	33	—	—			Cattle	"
"			68153	-	30	11	34	—	—			"	"
"	CRI	1871		-	30	11	35	—	—			"	"
"		1683		-	30	11	36	—	—			"	"
"			61526	-	30	11	37	—	—			"	"
"			60212	-	30	11	38	—	—			Hogs	"
"			62816	-	30	11	39	—	—			"	"
"			15037	-	25	10	40	—	—			Cattle	"

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Train No. _____ Date 4-8 190_____ E E Tracey Conductor. 15012

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BALLAST	TONNAGE GOING	TONNAGE RETURN		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
R			190851		26	16	61	Pla	Ha	Coal S		179	
B		14	"		22	8	62	—	206	Mdse		206	
—			490		16	4	63	206	163	—		7753	
R	WQ	13478			25	5	64	"	"	Eggs		9	
B			93071		25	17	65	"	"	Mdse		1806	
R	WR	20788			19	9	66	"	"	Mdse		163	
—			21021		20	5	67	"	"	Mdse		87	
—			26828		20	5	68	"	"	Mdse		163	
—			92374		22	4	69	"	"			0	
R		13014			25	5	70	"	"	Eggs		222	Empty
—	WQ	9580			25	6	71	"	"	"		"	"
—	RO	12469			32	17	72	"	"	Mdse		"	"
—	WR	11278			25	5	73	"	"	Mdse		"	"
—	Erie	61434			25	5	74	"	"	Eggs		"	"
—	WR	9871			26	6	75	"	"	"		"	"
							76						
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Revised May 8th, 1906. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1502 but not for filing. You mean the report of the conductors that handled those particular trains?

Q. From which you make up the statement?

A. That will be quite an undertaking again. We will have to go all through those reports again.

Q. Haven't you got the reports selected out from which you are making the statement?

A. I think not. I think they are getting up the report from some special form of report which they call, "A wheel report."

The COURT: I guess that is all, Mr. Crosby.

E. P. RIPLEY, called as a witness on behalf of the complainant in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. COWAN:

Q. Will you please state your name?

A. E. P. Ripley.

Q. In what business are you engaged?

A. President of the Atchison, Topeka & Santa Fe Railroad.

Q. How long have you held such position?

A. Nearly ten years.

Q. Previous to that time, were you in the railroad service?

A. Yes sir.

1503 Q. In what way and with what department and for what roads and for what length of time?

A. Five years previous to that Vice President of the Chicago, Milwaukee & St. Paul. For twenty one years prior to that, in various positions on the Chicago, Burlington & Quincy.

Q. In the course of that railroad experience have you become acquainted with the matters pertaining to the operation of railroads, the expenses, the earnings, the traffic and the rates and the various matters pertaining to the business of a railroad company?

A. I hope so, I think I can say yes.

Q. That experience has had to do with the traffic and transportation between the Missouri river and Chicago as well as other sections of the country?

A. Yes sir.

Q. What in a general way are the districts of country geographically speaking, which are served by the Santa Fe Railway and some of the prominent points commercially?

A. The Santa Fe Company has a straight east and west line between Chicago and San Francisco. It has a straight north and south line between Kansas City and Galveston with numerous branches, in all about 9,000 miles.

Q. You operate in the states of Illinois, Iowa, Missouri,

1504 Kansas, Indian Territory, Oklahoma, Texas, Colorado, New Mexico, Arizona, and the state of California?

A. Yes, and a little in Louisiana.

Q. In the business there is embraced practically all classes of

POOR COPY

traffic which is transported within the districts which I have mentioned?

A. All classes.

Q. Included in that traffic is the transportation of live stock and packing house products, dressed meats, between the Missouri river and Chicago and in other parts of the country to which those classes of traffic go?

A. Yes sir.

Q. From your knowledge and experience, are you able to state the relative cost of the service of transporting dressed meats and packing house products between the Missouri river and Chicago?

Mr. SEVERANCE: That will be answered yes or no.

A. I think so.

Mr. COWAN:

Q. What is that relative cost per car load or ton or hundred pounds whichever way you care to make the statement, between Kansas City and Chicago?

A. I have caused to be made——

Mr. DAWES: If your Honor please, we object to testimony along this line on the ground that it is not rebutting testimony. The complainant was required to make his case in any way he saw
1505 fit. He made it by the introduction of the finding of the Interstate Commerce Commission establishing these particular facts. Establishing the fact of the cost of carriage based upon that relation of the two commodities. We met that by proof to the contrary. Now, it is clear to me, it seems clear that this does not rebut our testimony, but it is evidence which Mr. Cowan should have introduced in chief.

The COURT: Objection overruled.

To which ruling of the court the defendants and each of them then and there duly excepted.

A. I have caused to be made a statement showing what we consider to be the relative cost for the transportation of dressed beef, packing house product and live stock per car, from the Missouri river to Chicago. I made that statement in three ways.

That is to say, I have first taken the entire cost, meaning by the cost everything that enters into the operation of a railroad including the interest on its debt, including all its general expenses incident to its operation, upon the theory that all business ought to contribute towards those items.

I made a second statement showing the relative cost based upon our expenses exclusive of our taxes and of our interest. I
1506 have made a third statement based wholly upoj the mere movement expense, that is without any regard to our general expenses and upon the theory that our general expenses remain the same whether we take either or both classes of business or not.

Q. Mr. Ripley, before you proceed to explain that statement, I desire to ask if the relation of rates between the two commodities, or more specifically, between these two commodities, is properly

to be based alone upon the cost of service, and if not, state what factors should be i-cluded in the relation of rates between two commodities like packing house products and dressed meat on the one hand and live stock out of which it is produced, on the other?

A. That is a very large question and a complete answer to it will, perhaps, involve more of a disposition on that subject than the court cares to hear.

Primarily, one princip*le* rule which should govern in the making of all rates is what the business will bear. I don't mean by that all that the business can bear or all that can b- extorted from the business, but what the business will bear having regard to the value of the service to the shipper, which includes the value of the commodity transported; second, the cost to the railroad company and third, the relation of the goods, which are the most valuable
1507 to those which are the least valuable.

It becomes necessary to bring all of those considerations to bear upon the judgment that is exercised in the making of rates where the carrier has complete control of t-e rates; but that rule or that method, which is the proper way, is of course, entirely set aside at times by reason of necessity. It is entirely set aside when competition enters into the case where it is not a question of what ought to be but what you can get.

All of those things should be taken into account in the making of rates, but they frequently are not. There never has been a time when the cattle rates brought anything like their fair proportion of the general expenses of a railroad company, in the way of revenue. The cattle rates are a relic of the days when the country was open and when the cattle could be driven to market quite as cheaply as they could be taken by rail, although not quite so quickly.

The result of that has been that, from time immemorial, ever since railroads were built in this western country, the cattle rates have been low in proportion to the rates on other commodities, and although conditions have changed and the country has be-
1508 come cut up into farms and it is no longer, and has not been possible for many years to drive the cattle, yet it has not been possible to advance the rates and make them what they should be as compared with the rates on other commodities.

Q. When you speak of rates on other commodities, do you mean packing house product and dressed meat?

A. The packing house product and dressed meat has been a later development and the rates on those articles have been made not upon any theory of rate-making and not by the railroad companies, but by the shippers. That is to say, the influence of competition has been such and the concentration of the business in few hands has been such that they have been able to dictate terms to the railroad.

Q. Now you may state, Mr. Ripley——

The COURT: Have you finished your answer to the other question?

A. I think so. The question was a long one, and there may have

been some point that I overlooked but I think that practically answers it.

Q. The first part of that question was whether the basis of the rate was the value of the carriage. Now what do you say about that, yes or no? The cost of the carriage, what it costs you to get it there?

A. If I understand the question it is whether the cost is
1509 a prime factor or a principal factor on the part of the railroad in determining the rate which should be made. Is that the question?

Mr. COWAN:

Q. Yes, that was embraced in the question.

A. I cannot say that cost is the prime factor. I am inclined to think it is not. Of course, it would be exceedingly unwise to cast the question of cost aside in the consideration of any one rate, but so large a portion of the expense of the railroad remains fixed whether the business is large or small, that it is very often the case that business of a low class and which cannot be moved at all except at very low rates, is moved at less than the average cost upon the theory that it will not add to that cost or general expense and that it will pay a small profit over and above the mere cost of the transaction itself.

In other words, having the plant and having all of the facilities and having an administrative staff, it is better probably to take certain business at less than the average cost, rather than not to move it at all. Another reason for that is, that the movement of those commodities very often stimulates industries of other kinds, various collateral industries, and in that way conduces to the benefit of the carrier.

Q. Are rates made or have they ever been made with a view
1510 to the production of an equivalent profit on each commodity or class?

A. It is impossible to do that. No, I think the rates have always been made with reference to the value of the service to the shipper, rather than the cost to the railroad.

Q. Now, Mr. Ripley, you may explain from the statement you have, the items which you first mentioned pertaining to the cost of the service in transporting dressed meat, packing house products and live stock, relatively, between Kansas City and Chicago, giving as you go along such reasons and explanations as you please.

A. Does your question pertain to the dressed meat?

Q. Dressed meats and packing house products on the one hand and live stock on the other?

A. In the case of dressed meat, I have taken the average weights as given, as ascertained and given by the Interstate Commerce Commission in its report in the case which is under discussion.

I have taken a net weight of 21,000 pounds and a gross weight of 97,000 pounds, the latter, the 97,000 pounds including the weight of the empty car returning, between Kansas City and Chicago, via our line (which is the shortest), a distance of 458 miles.

The cost of the Kansas City terminals, that is our general
1511 expenses at Kansas City, the general terminal expenses, is
$6.80 a car, that is the average of all business taken in and out of Kansas City.

Q. I could not quite hear?

A. The terminal expense in Kansas City of handling our business, the amount that it costs us per car to handle our business, the yard expenses there on all business taken in and out, is $6.80 per car.

The cost of transporting property, the average cost for transporting all property over our Missouri Division, which embraces the line from Kansas City to Fort Madison is two mills and twenty five one hundredths per ton per mile.

Q. Will you please speak louder?

A. I will repeat that. The cost of transporting all business over our Missouri Division, which extends from Kansas City to Fort Madison is two and twenty three one hundredths mills per ton per mile, which, applied to this weight makes $23.15.

The cost on our Illinois Division, which brings it from Fort Madison to Chicago, 237 miles, is two mills, which makes the cost of transporting that car $22.99.

Our Chicago terminals, the average of expense in Chicago on all cars in and out is $5.74, so that the total operating expense is $58.68. That is the actual cost to us of hauling a car of dressed beef from Kansas City to Chicago; but, included in that, in our general cost
is the item of car repairs and, as much as this business is
1512 moved in cars belonging to others, which are repaired by others, I have deducted that.

I have allowed six and four tenths mills per car mile. That is more than it would cost us ordinarily, but happens to be what it costs our company last year when our expenses were abnormal. I deduct therefore from the $58.60, $5.86 leaving the net cost to us $52.82. Then I add one cent mileage per car per mile, which is paid to the owner of the car and which adds to that sum $9.16, making the total operating expense $61.98.

I add to that the switching which we are obliged to pay in Kansas City, in order to get the car, which is $4.00. I add for interest and taxes on our own railroad, $1.77 per car mile which amounts to $16.21 and makes the total transportation cost $82.19.

The COURT:

Q. How much?

A. $82.19. The revenue on that car at 20 cents per hundred pounds, 21,000 pounds of dressed beef, is $42.00, and the deficit is $40.19.

The second calculation takes into account only the operating cost and the result of those figures is that the expense is $65.98 and the revenue still remains $40.00, making the deficit only $23.98.

The third statement takes into account only the movement cost
without any regard to any of our general expenses, any of
1513 our fixed expenses or any of our interest the bare movement cost, based upon 55 per cent. of our operating expenses which

is as near as we can get it. That is, we figure our total expense, of our total expense 55 per cent. applies to the actual movement. The result of that shows a total expense of $39.19 and a total revenue of $42.00, which leaves a profit of $2.81.

Mr. BAXTER:

Q. How much did you say?

A. $2.81. In other words, it leaves us $2.81 per car or that business would contribute $2.81 per car towards paying our interest, our taxes, and our general expenses of all descriptions.

In the case of the cattle, I have also taken the same basis that I have named, the gross weight and the net weight as averaged by the Interstate Commerce Commission in its report. Of course, taking it on the one, it is only fair to take it on the other. I find on that the result to be, under the first method, that is taking all of our expenses, I find the total transportation cost to be $64.77; the revenue to be $46.00 and the deficit $18.77. Under the second method I find the total operating cost, leaving out our interest charges, $48.56 and the revenue, $46.00, making a total deficit of $2.56. Under the third plan, simply on the movement cost based on 55 per cent. of the operating expenses, I find the cost to be $26.71, and the
1514 revenue as before, $46.00, making a surplus profit contribution towards our general expense of $19.29 a car.

In the case of packing house product, figured on the same basis, I find under the first method the deficit to be $29.03; by the second method, $12.82, and under the third, a surplus of $16.35.

Mr. COWAN:

Q. Are you through?

A. Yes, sir.

Mr. SEVERANCE: You will have that statement filed?

Mr. COWAN: I will after I get through, yes.

1514*a* Cattle.

Gross weight, 77,000 lbs.; net weight, 22,000 lbs.; miles, 458.

Kansas City Terminals In & Out	$6.80
Mo. Division 214 miles—8239 Gross Ton-Miles at 2.23 mills	18.37
Ill. " 237 " 8824 " " " " 2.00 "	17.65
Chicago Terminals In & Out	5.74
Total Operating Expense	$48.56
Add for Interest & Taxes at 1.77 Cents per Car-Mile	16.21
Total Operating Cost	$64.77

Results.

		Total transportation cost.	Total operating cost.	Movement cost, based upon 55% of operating expenses.
		$64.77	$48.56	$26.71
Revenue freight at 20c...	$44.00			
Terminal charge	2.00			
		46.00	46.00	46.00
Deficit		$18.77	$2.56	
Surplus				$19.29

Ripley Exhibit A (first), vol. 13, p. 1514.

1514*b* Dressed Meats.

Gross weight, 97,000 lbs.; net weight, 21,000 lbs.; miles, 458.

Kansas City Terminals In & Out	$6.80
Mo. Division 214 miles—10379 Gross Ton-Miles at 2.23 mills..	23.15
Ill. " 237 " 11494 " " " " 2.00 " ..	22.99
Chicago Terminals In & Out	5.74
Total Operating Expense	$58.68
Less prop'n for car repairs equals 6.4 Mills per Car-Mile... ..	5.86
	$52.82
Add amount paid for Car-Mileage 1c. per Mile	9.16
Total Net Operating Expense	$61.98
Add Belt Line switching to Packing Houses in Kans. Cy.....	4.00
Add for Interest & Taxes 1.77 Cents per Car-Mile.....	16.21
Total Transportation Cost.....	$82.19

Results.

	Total transportation cost.	Total operating cost.	Movement cost based upon 55% of net operating expense.
	$82.19	$65.98	$39.19
Revenue at 20 cents per 100.....	42.00	42.00	42.00
Deficit.....	$40.19	$23.98	
Surplus.....			$2.81

Ripley Exhibit B, vol. 13, p. 1514.

1514c Packing House Products.

Gross weight, 103,000 lbs.; net weight, 28,000 lbs.; miles, 458.

Kansas City Terminals In & Out	$6.80
Mo. Division 214 miles—11042 Gross Ton-Miles at 2.23 Mills..	24.57
Ill. " 237 " 12229 " " " " 2.00 " ..	24.41
Chicago Terminals In & Out	5.74
Total Operating Expense	$61.52
Less prop'n for car repairs 6.4 Mills per Car-Mile	5.86
	$55.66
Add amount paid for Car-Mileage 1c per Mile	9.16
Total Net Operating Expense	$64.82
Add for Belt switching to Packing Houses in K. C	4.00
Add for Interest and Taxes 1.77 Cents per Car-Mile	16.21
Total Transportation Cost	$85.03

Results.

	Total transportation cost.	Total operating cost.	Movement cost based upon 55% of net operating expense.
	$85.03	$68.82	$39.65
Revenue at 20 cents per 100	56.00	56.00	56.00
Deficit	$29.03	$12.82	
Surplus			$16.35

Ripley Exhibit C, vol. 13, p. 1514.

Q. Are those statements of the estimated figures given, correct as showing all the relative expense of the cost of the service between the packing house products and the dressed meat on the one hand and the live stock on the other?

A. I think so. They represent our best knowledge on the subject.

Q. In your opinion, should the relative rates on live stock and packing house products be such that they are greater on the live stock than on the product, including dressed meat?

A. Not unless conditions force the railroad to take that position.

The COURT:

Q. What is that?

A. Not unless conditions force the railroads to take that position. This is not a question of how much money the railroads shall make; this is a question of how little money the railroads shall lose.

1515 Mr. COWAN:

Q. If the rates were to be made by some authority having power to make the rates between the Missouri river and Chicago on the dressed meat and packing house product, what ought to be the relative relation of those rates?

A. I think in view of all the conditions that the rate on dressed beef should not be less than 150 per cent. of the rate on cattle.

Q. How about it on packing house products?

A. That is a mere matter of judgment, of course. On packing house products loaded in our ordinary cars, the difference, I think, should be very much less, that is, packing house products not going under refrigeration. I don't mean less than cattle, but the difference between the two should be less.

The COURT:

Q. Which should be the most?

A. Packing house products should be the most theoretically, and as a matter of justice to all parties concerned, the rate on the manufactured product should always be more than the rate on the raw material.

Q. Why is that?

A. Because it is worth more, because the freight charges constitute a smaller percentage of its value and on the general theory that the rates should be fixed with reference to the value of the product

1516 or, in other words to what the traffic will justly bear.

Q. It costs you more to carry it, don't it?

A. More to carry it?

Q. A car of dressed meat or finished product?

A. Yes, that is perhaps an additional reason.

Q. No, I mean it costs you less to carry it than the live stock?

A. No, sir, quite the contrary.

Q. You- figures show that, don't they?

A. No, quite the contrary.

Mr. COWAN:

Q. The court perhaps did not understand your conclusion and I will ask you the general question, for the benefit of the court, whether it cost you more to carry the dressed meat and packing house products than it does the live stock?

A. The statements that I have read show that we lose less on the live stock than we do on the packing house product.

Q. If you based it alone on the cost of service, what would be the proper relation of the rates on the two?

A. Well, I have made no calculation as to that. If my figures are correct as to the cost of service, that is a calculation that could be made from those figures.

Roughly speaking, these figures show a cost in this particular case, in the case of the two commodities from Kansas City to

1517 Chicago, they show roughly an operating cost in the case of dressed beef of $82.19 a car; in the case of cattle of $64.77 a car, which is about 40 per cent. or a little less than 40 per cent.

Q. Now will you please explain——

Mr. BAXTER: I would like to have the witness go on and state the cost of the live stock in that same connection?

A. Sir?

Q. I would like to have you state the cost of the live stock car.

A. I did. I said that the total cost of the dressed beef we figured as being $82.19 a car, that is all expenses.

Q. On packing house products, what would it be?

A. On packing house product, $85.03.

Q. On live stock?

A. On live stock, $64.77.

Mr. COWAN:

Q. I would like to have you explain to the court wherein lies the items of difference in the cost relatively of handling the two classes of product, commodities?

A. There are quite a number of items that enter into it. The time in both cases is about the same. Both classes of business demand fast time, and regular time. The dressed beef car is not used for any other purpose. In this computation I have assumed that the other car was not used for any other purpose but as a matter of fact about 20 per cent. of our stock cars are used for return loading.

1518 I have not given the cattle side of the question the benefit of that fact. There is carried all the way from 2,000 to 6,000 pounds of ice in a refrigerator car used for dressed beef. There is paid, between the Missouri River and Chicago one cent a mile for the use of the car and on its arrival at Chicago we are obliged to deliver it at the stock yards without charging for it, while we do charge on the cattle. We are obliged at Kansas City to pay a heavy switching charge on it which we do not pay on the cattle.

Q. Will a train haul a greater gross tonnage of live stock or of packing house products or of dressed meats?

A. A greater gross tonnage?

Q. Yes.

A. Everything being equal a train will haul the same gross tonnage of one as the other.

Q. In your experience on the Milwaukee & St. Paul road, was that the same?

A. Yes. I never made any special investigation of the Milwaukee & St. Paul conditions. It is possible that in some respects they might vary from ours. In fact our conditions as to this business might vary slightly from that of some of the other roads. Some of them may not be subject to quite as much switching charge but in other respects I think the conditions are about the same.

Q. Aside from the respective amount of switching charges,

1519 the condition- are substantially the same over each of the roads?

A. I think so.

Q. How is that with respect generally to the operating cost of

trains on the roads doing business between here and the Missouri river points, like Kansas City and South Omaha?

A. How is that?

Q. I mean the relative cost on the different lines of road. Between your road, for example, and the Milwaukee & St. Paul or the Northwestern?

A. I don't know that I yet understand the question.

Q. The point I seek to draw out is whether the relative cost of the various items of conducting the transportation is greater or less on your road than it is on the other roads, as pertaining to these particular classes of traffic?

A. Well, the classification of expenses is practically the same by all lines. That is, the items that go into the cost of transportation are the same. In fact, the classification is practically prescribed for us by law.

Q. Now, we will take the item of the mere cost of the haul or movement, as you term it, which you estimate to be 55 per cent. of the total operating expenses, as I understand. Would that be substantially the same via both lines aside from the difference in switching charges at the terminal?

A. I think so. It might be slightly greater or less varying with the character of the road. The question of grades, the ques-
1520 tion of the cost of coal and various other items that would enter into that so as to affect it slightly but not greatly.

Q. Would it so affect it as to require any different adjustment of the relative rates on the one and the other or on the one to the other?

A. I should think that the same items of expense could justly be taken in on both sides. I don't see that it would affect the comparison.

Q. Now, if you will let me have those statements, I will ask you some questions that I can only ask intelligently, if at all, by looking at the statements. (Statements handed to counsel.) Aside from the rates between the Missouri river and Chicago, relatively on these two classes of traffic, what is the adjustment of the rates on dressed meat and packing house products on the one side, and live stock on the other, as to whether one is higher or lower than the other?

Mr. SEVERANCE: Where?

Mr. COWAN: In other parts of the country except between Missouri river and Chicago; for example, from here to New York?

A. Well, I do not know that I am a competent witness as to the rates between here and New York. My understanding is that they are between 50 and 60 per cent. higher on dressed beef than they are on cattle between here and New York.

Q. Than it is on cattle?

A. Yes sir.

1521 Q. On other parts of your line except between the Missouri river and Chicago, are the rates on dressed meats and packing house products higher than they are on the live stock or lower?

A. Higher.

Q. Is there any considerable movement of dressed meat and packing house product from Fort Worth to the north-east?
A. Yes, a considerable movement, I cannot tell you how much.
Q. And a considerable movement of live stock?
A. Yes sir.
Q. The rates are higher on the packing house product and dressed meat than on the live stock?
A. Yes sir.
Q. And from St. Louis eastward that same condition prevails, does it not?
A. I don't know.
Q. From the Missouri river to the west?
A. The rates are higher on the manufactured product.
Q. The first item in each of the sheets of computations here under the head in the one case of "Dressed meat" and the other, "Packing house products," and the other, "Cattle" is terminal expense in and out of Kansas City, $6.80. How is that obtained, that item, by what method?
A. Taking our entire terminal expense and dividing it by the number of cars handled.

1522 Q. Is there any better or more accurate method of ascertaining the terminal expense of a commercial point like Kansas City or Chicago, than by dividing the entire cost of terminals by the number of cars?
A. I don't know of any. It strikes me as being the obvious method.
Q. Is that the method that is customarily used by railroads in ascertaining the terminal expense?
A. It is customary with us.
Q. There also appears the item of terminal expenses at Chicago, $5.74 per car, I believe; Chicago terminals in and out. How was that ascertained?
A. The same way.
Q. You consider then, that you have a terminal expense per car on all business handled at Kansas City of $6.80?
A. A terminal expense, average terminal expense.
Q. And the average terminal expense at Chicago is $5.74?
A. Yes sir.
Q. Have you any reason to know whether your terminal expenses at Chicago or Kansas City are greater than the other roads doing business between the two places? Are they greater or less?
A. I have no information on that subject.
Q. These terminal expenses at local stations, when you originate freight at local stations, consist in the maintenance of your

1523 depot and the force you have to work there, do they not?
A. Yes.
Q. So that all freight bears a terminal expense at both ends of the line?
A. Yes.
Q. What is estimated by railroad men of experience as being the

proportional amount of terminal expense in the transportation of freight, to the other expense?

A. I don't know that any such estimate was ever made. I never made any.

Q. Have you an opinion as to the percentage it bears to the total expense?

A. No, I have not, because the terminal expenses at ordinary stations, local stations are not classified. They embrace everything and they would not be divided between the passenger and freight. No estimate of that has ever been made that I know of. I don't know what good it would do to make it.

Q. In the case of the computations made here of terminal expenses at Kansas City and Chicago, was the passenger traffic separated from the freight traffic?

A. Those figures are made up—Yes. Those figures do not include passenger traffic. Passenger traffic is seggregated, kept by itself.

Q. The total expense of the freight traffic, incurred locally at Kansas City and Chicago, is simply divided by the number of carloads handled or the number of loaded cars, which?

A. Locally, at our local stations?

1524 Q. No, no, I mean the terminal expenses at Kansas City, for example?

A. Yes.

Q. Of freight?

A. Yes.

Q. That is divided by the total number of loaded cars?

A. Yes, the total number of all cars, loaded and empty.

Q. Loaded and empty?

A. Yes.

Q. It is $6.80 in the case of Kansas City, representing the expense incurred both on the loaded in and the empty out, or simply one transaction?

A. The loaded in and the empty out or *vice versa,* as the case may be.

Q. And the two together make $6.80?

A. Yes. $6.80 for every car handled, whether empty or loaded.

Q. Now, as a matter of actual expense at Kansas City, you pay a switching charge of $4.00, I believe?

A. I have estimated the charge there at $4.00 although it varies somewhat. It varies between the lines and it varies in the case of our own line. I could not get the exact figures. I took $4.00 there but it is only fair to state that that is the maximum. There is some of that business that we reach with a smaller switching charge but I think none is below $3.00.

Q. And that $4.00 is applied to the dressed meats and packing house products?

A. Yes sir.

Q. Now in the case of live stock, what does that cost at

1525 Kansas City?

A. In the case of live stock,—that is included in our gen-

eral terminal expense. We pay 25 cents a car for loading and I think there is some other expense. The total expense is not over 50 cents but whatever it is, it is included in our general expense.

Q. In other words, you made no separate statement of the item of expense on cattle at Kansas City?

A. No, because in our accounts that is all put together.

Q. Would the $6.80 be sufficient, however, to cover the expense in the case of the packing house products and dressed meats, aside from this $4.00, or do you pay that out extra in addition to your other expense?

A. I am taking every load. I have reason to suppose that one car costs more than another. As a matter of fact, that may be the case.

Q. Whom do you pay the $4.00 to?

A. To the Belt Lines in Kansas City, the suburban Belt and the Kansas City Belt.

Q. Where does it deliver the packing house product to you in Kansas City?

A. At the beginning of our line at Sheffield, at the east end of the city, the east edge.

Q. Is that the same point at which you start to switch live stock down to the yards?

A. No, we haul the live stock about four miles further than we haul the dressed beef.

1526 Q. And you do that with your own service?

A. Yes.

Q. Considering the charges that have to be paid, is it more expensive to receive the packing house product and dressed meats at Kansas City than it is to receive the live stock there?

1527 A. Considering the $4 switching charge naturally.

Q. Now, in delivering at Chicago, is it more expensive or less expensive to deliver packing house products and dressed meat than live stock, considering that you charge $2 terminal charge on cattle?

A. There is practically no difference in the expense we incur in delivering to the Stock Yards, but in one case we charge $2 and in the other case we do not?

Q. Do you deliver both with your own power to the stock yards, or do you pay a switching charge to the Junction Railway in the case of packing house product and dressed meat?

A. We have to pay a trackage charge to the Junction Railway.

Q. The same as you do on live stock?

A. Yes.

Q. You do not know I presume, what the other roads pay on packing house products and dressed meat?

A. I do not.

Q. Is the expense incident to the terminals at Chicago per car greater or less in the business of the Santa Fe than it was with the Milwaukee & St. Paul when you were with it?

A. I cannot definitely answer that question.

Q. Can you approximately do so?

A. My recollection is that it costs the St. Paul a little more to get to the Stock Yards than it does us.

Q. But with respect to the total expenses of the terminals
1528 at Chicago, or terminal expense at Chicago?

A. I never saw those figures for the St. Paul, I do not know that they were ever made.

Q. Does your road, if you know, have a greater expense in its terminal facilities and cost of deliveries at Chicago than the other roads entering here?

A. I do not know.

Q. You do not know whether this estimate of $5.74 per car at Chicago terminals in and out should apply to the other roads in whole or not?

A. I do not.

Q. It would apply to a very large extent, would it not?

Mr. DAWES: He says he does not know.

Mr. SEVERANCE: I think he has been cross-examined sufficiently on that your Honor.

Mr. COWAN:

Q. In the case of the first computation Mr. Ripley, the cost is estimated on the gross ton miles 2.23 mills in the case of dressed meat, that includes, as I understand your answer, all the operating expenses, which includes the cost of maintenance of every character, general expenses and the interest charges upon your funded debt?

A. Yes.

Q. Also taxes?

A. Yes.

Q. The second computation——

Mr. SEVERANCE: You have gone through all of that.

1529 Mr. COWAN:

Q. —includes simply the operating cost leaving out the interest account?

A. And taxes.

Q. And the taxes. The third includes the cost of conducting transportation as that term is generally used in the Interstate Commerce account?

A. No, not altogether. That is simply movement expense. There is some items in the case of conducting transportation which are not included in that computation.

Q. What are those items, or do you know?

A. Well, superintendence—well, if you have a classification there of transportation items, I can tell you practically what is left out.

Q. I will ask you to look at the statement in the annual report of the Santa Fe—I happen to have one for the year 1903 (handing witness a document).

A. This is the cost of conducting transportation. In that is included superintendence of transportation and traffic. That is not, strictly speaking, a movement expense; that is to say, that would remain the same whether we took this particular business or did not.

It includes advertising, outside agencies, commissions, rents of buildings, and a lot of general expenses which are left out of this computation as to absolute movement expenses. I explained when I made that statement that we had assumed, we had taken 55
1530 per cent. of our total expenses as appertaining to the mere movement of the property. Taking out these various things which are not directly affected by the taking of this business, would make the comparison a little more favorable for all those classes of business than it would be if we left them all in. That is, it shows a larger profit than it would if we included all of our conducting transportation expenses in the computation.

The COURT: Do you figure there the cost of keeping up stock yards for the live stock, and that sort of thing?

A. In this particular case there is no cost for maintaining stock yards. We have figured in what we pay the stock yards company for loading a car for the stock.

Q. No; but I mean along your line, the pens and so forth?

A. This computation is made on what it cost to handle live stock between Kansas City and Chicago, as compared with what it costs to handle dressed beef between the same two points, and makes no account of anything local between Chicago and Kansas City.

Q. You did not figure any expense—do you keep pens and yards along the line?

A. Yes sir.

Q. You have not figured that in?

A. No, it does not belong in the computation of these two items.

Q. It belongs in somewhere, don't it, when you compare the two?

A. If the question had been asked me, what was the rela-
1531 tive rates between dressed beef from Carrollton, Missouri, and the rate on cattle from Carrollton, Missouri, it would belong in there.

Q. I see.

A. But this is simply a question as between the Missouri River and Chicago on both classes of goods.

Mr. COWAN:

Q. Well, I have the other question noted to ask you. Now, suppose the live stock originates at some point east of Kansas City, we will say Carrollton, I believe that is on your line?

A. Yes.

Q. You have the same rate from Carrollton on live stock that you have from Kansas City, have you not, to Chicago?

A. Yes.

Q. Now, in that case would the operating cost be greater or less than on the cattle from Kansas City?

A. That is a very hard question to answer, perhaps an impossible question to answer, it is a matter of judgment. I do not think there would be very much difference. It does cost more to pick up this stock at local stations, it costs more per mile than it does where it comes to us in large quantities, as it does at Kansas City, or any other division point where we have facilities *of* taking care of all the business that offers. A car or two of live stock delivered at a local

station means that the car has to be moved there and set out,
1532 and that a train has got to stop and take in, and the expense is indeterminate, almost impossible to tell just what it is, but it is there. There is more or less expense and more or less delay connected with it. On the other hand we haul it a few less miles, which would tend to make the expense somewhat less. On the whole my judgment would be that on the stock picked up within 100 miles of Kansas City, it probably actually costs us more to move it than it would if it was delivered to us at Kansas City.

Q. It would cost more for the item of movement?

A. Yes.

Q. How much more do you think?

A. I am not competent to express an opinion on that. I don't know of any way in which it could be figured out.

Q. It would be a very small amount of difference, would it not?

A. Oh, it is not a large item in any case, either for or against.

Q. Now, the expense of having that car at Carrollton, or three or four cars there, and of having them put into the train, would be an item of expense that would be incurred there, that would not be incurred at Kansas City?

A. There would be more or less of an off-set to it at Kansas City. At Kansas City we have to pay the stock yards for loading the cars, which we do not have to pay at local stations. We have to assist in loading it, but it is generally loaded by the shippers, with the assistance of the trainmen.

1533 Q. But as compared with the dressed meat and packing house product on which you have to pay the Belt Line $4 at Kansas City, and the expense of taking a car at Carrollton would be considerably less than it would if it was a packing house product car at Kansas City?

A. I think so, taking the business as a whole.

Q. In the mere matter of hauling, the expenses per mile estimated upon these papers, would enable one to determine what the difference in the actual haul was, whether it was taken at Kansas City or Carrollton, would it not? The basis of that computation is in these figures?

A. No, I don't think it would. If I understand your question, you apply those figures to the Carrollton car just the same way you would to a Kansas City car.

Q. Yes, apply the cost of haul per mile from Kansas City to Carrollton, you would deduct that in case you were comparing the car load of cattle from Carrollton to Chicago, deduct the cost between Kansas City and Carrollton from the haul?

A. I should say not. I should say it would be off-set by the cost of stopping and picking the car up.

Q. You- judgment is, one would be about equal to the other?

A. Yes sir.

Q. I will ask you whether that is so considered on your road in the making of rates as applied to this traffic?

1534 A. It is a question I have never discussed with anybody else connected with the road. I am not able to say.

Q. Your rates on the product from Kansas City and on the live stock locally from there are the same, are they not, on stock?

A. Yes sir.

Q. And you apply the rate from Kansas City as a maximum for any intermediate haul on the live stock?

A. Yes sir.

Q. Have you any packing house or slaughtering establishments between Kansas City and Chicago, which ship either dressed meat or packing house product?

A. No sir.

Q. Just one question only, and that is if you know what the relative weights are on the live stock and refrigerator cars?

A. I don't know that I can answer that question exactly. Our ordinary live stock car empty weighs about 27,000 to 29,000 pounds. A refrigerator car will weigh I suppose, 37,000 or 38,000 pounds perhaps without any ice.

Q. Your basis of computation is simply to except the relative weights fixed by the Commission in this case?

A. Yes sir.

Q. And your practice would be the same in net results whether the weights should be respectively increased or not, if the relative weights between the two should remain the same as the Commission left them?

A. If the relative weights remained the same, the relative
1535 figures would remain the same.

Examination by Mr. SHAVER:

Q. Mr. Ripley, are not classifications of traffic based largely on values?

A. I said at first that that was theoretically and properly one of the very important considerations to be taken into account in making rates and classifications of freight, but that it was very often necessary to set it aside on account of conditions over which the carrier has no control.

The COURT: That is the value of the commodities, you mean?

A. Yes sir.

Mr. SHAVER:

Q. Where competition does not absolutely dictate the rate should not value be a controlling factor or element in fixing the relative rates on different articles of traffic?

A. Not absolutely controlling. I said before that theoretically and properly, it was a very important item to be considered, but even in cases where competition does not absolutely control, it is necessary sometimes to a certain extent, or desirable sometimes to disregard value, not often but sometimes; because conditions may be such even in the case of valuable commodities that they can only be moved on a rate which, considering the value of the commodity, is small.

1536 Q. Value is an important element in fixing classification of rates?

A. An important element, should always be an important element.

Q. Why are dry goods and boots and shoes classified higher and given higher rates than groceries.

Mr. DAWES: I object as going into a domain which we do not care to investigate.

Mr. SHAVER: It bears on the question of the importance of the element of value.

The COURT: Well, if he knows—if you know, answer.

A. They are given a higher rate primarily because of their value, and because the freight charges in the case of those valuable goods constitute a very much smaller percentage of the value than they do in the case of other commodities. Any rate that is charged in this country on dry goods might be multiplied by 5 and it would not affect the retail price of the goods, the consumer would not pay any more than he does now.

Mr. SHAVER:

Q. Are not dry goods as a rule more easily handled than groceries?

Mr. SEVERANCE: By whom, Mr. Shaver?

Mr. SHAVER: By the carrier.

A. Dry goods as a rule are packed more compactly and perhaps can be handled easier than the average run of groceries. On
1537 the other hand they are more in the line of luxuries and they are more valuable per pound.

Q. Isn't the loading capacity of groceries as a rule greater than that of dry goods?

A. That depends on the character of the groceries and the character of the dry goods.

Q. I said as a rule?

A. You can load a car load of woolens heavier than you can a car load of mixed groceries; you can load a car load of sugar heavier than you can any kind of dry goods. That is a sort of question that it is almost impossible to answer. That would be very much the same kind of question that it would be to ask me which I liked best, billiards or cabbages.

Q. I didn't exactly hear that, which you liked better?

A. It was not pertinent to the question.

Q. Sir?

A. I said, it is very much the same sort of a question as it would be to ask me which I liked best, billiards or cabbages.

Mr. DAWES: And you don't like cabbages?

Mr. SHAVER:

Q. Even where groceries have a greater loading capacity than dry goods, isn't the dry goods rate higher?

A. The dry goods rate is uniformly higher than groceries, yes sir.

Q. Isn't the cost of handling dry goods as a rule less than that of handling groceries?

1538 A. Well, possibly the mere handling at the freight house might be a trifle less per ton in the case of dry goods, but that is so little, that it would not — any appreciable difference. There are certain classes of dry goods that are very light and bulky and which would not be as desirable as groceries. I stated in the first place that the prime reason for making higher rates on dry goods than on groceries is that they are more in the nature of luxuries and they are worth more money. I presume that is what you are trying to get at.

Q. Is not the risk greater in the case of handling goods of a higher value than in the case of handling goods of less value?

A. Undoubtedly the risk of fire and the risk of general damage. But that is so little as to make a very small percentage in a freight rate. Any insurance company would insure us for a mere bagatelle against those things on everything that we carry.

Mr. SEVERANCE: A small part of one per cent., is it not?

A. A small part of one-tenth of one per cent.

Mr. SHAVER:

Q. Is not the value of the service in shipment greater in the case of an article of higher value than it is in one of less value?

A. Certainly.

Q. That is one of the principal reasons why articles of higher value are given a higher rate than those of lower value?

1539 A. Precisely. The price of a keg of nails in Denver is perhaps 40 cents higher than it is in Chicago because the freight is 40 cents—I do not mean that is exact, but whatever it is. The price on a neck-tie for which you pay $1.50 in Denver, the freight on it probably amounts to less than a half a cent.

Mr. SHAVER: No other questions.

The WITNESS: The percentage that the freight cuts to the value of the goods should be largely considered; it is not always, I am sorry to say.

Cross-examination by Mr. BAXTER:

Q. Mr. Ripley, will you kindly look at this diagram that I lay before you. (Showing witness a diagram.)

Mr. COWAN: Before you ask the question, I would like to file these statements as exhibits to Mr. Ripley's testimony, marked "A, B and C."

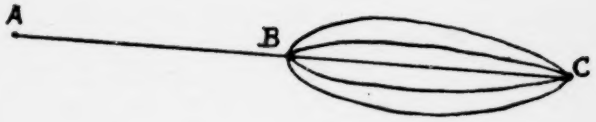
(The documents referred to, were marked "Ripley's Exhibits A, B and C" respectively, and filed as a part of his testimony.)

Mr. BAXTER:

Q. Mr. Ripley, suppose you were the President of a road running from "A" on this diagram, a point which I will suppose to be

1540 450 miles west of the Missouri River, running through a country where live stock is produced, but where there are not packing houses. In fixing your rate for the carriage of the live stock from "A" to "B" supposing your road terminated at "B," would you regulate your rates on live stock from "A" to "B" by the rates that you found these seven lines charging on packing house

1540a



Ripley. Exhibit "A" (recrd)

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products from the Missouri River, which was represented at "B" to Chicago, which is represented by "C"?

A. Certainly not. The two territories are entirely distinct and separate. Whatever the rate was from "B" to "C" would not have any affect on what we should consider a proper rate from "A" to "B." Conditions might be entirely different, probably would be.

Q. Now if you were to extend your road, build an extension of your road from "B" to "C," would you feel that in regulating your rates for packing house products between "B" and "C," you should reduce your rates back here between "A" and "B" on your live stock because you were forced to accept lower rates on the packing house products beyond?

A. Certainly not.

(The diagram shown to the witness as above was marked "Ripley's Exhibit 'A,' Mr. Baxter's Cross Examination" and filed as a part of said testimony.)

(Here follow facsimile, marked p. 1540*a*.)

1541 Cross-examination by Mr. SEVERANCE:

Q. What is the proportional rate on live stock from Kansas City to Chicago, average proportional rate?

A. I cannot answer that question.

Q. Will you give me the highest and the lowest that you are familiar with?

A. Well, I cannot answer that either.

Q. Isn't it a fact Mr. Ripley, that all or substantially all the live stock that is carried to Chicago from Kansas City, is carried on a proportional?

A. I think most of it is, yes, sir.

Q. And that proportional is considerably less than 20 cents, is it not?

A. I think so.

Q. Consequently a comparison such as you have introduced here as between rates at 20 cents for packing house products and dressed meats on the one hand, and live cattle on the other, would not be a comparison which would be applicable to existing conditions?

A. The rate would have to be—in order to make the comparison authentic or valuable, the actual rate in force would have to be used.

Q. Now, Mr. Ripley, would you have the kindness when you come back after lunch to bring with you a memorandum showing what these average proportionals are, if you can get hold of it during the noon recess?

1542 A. Yes, if I can get hold of it, and I presume I can, I don't know whether we could get the average.

Q. Well, get a range, the figures between which they range.

A. Yes, I can do that.

Q. Do that and I will examine you further with reference to that when you have the figures.

I show you this paper, which I will have marked "Exhibit 1." (The pamphlet was so marked.) This is the annual report of your system, is it not, for 1905?

A. Yes, sir..

Q. And that covers what period of time?

A. July 1, 1904, to June 30, 1905.

Q. And that report is correct is it not, as to its figures and statements, to the best of your belief?

A. Yes, sir.

Q. Now, you said that your rate, your local rate from Kansas City to Chicago on cattle was 20 cents, the same as on packing house products and dressed meats, how far this side of Kansas City does that rate apply?

A. I cannot tell exactly, it runs for something like 100 miles I think.

Q. Would you also ascertain that this noon?

A. Yes, sir.

Q. And let us know. And for all stations within that zone,

1543 and not from Kansas City, on through business, you collect the 20 cent rate?

A. Yes, sir.

Q. Therefore, this comparison of the through rate on live stock, I should say on packing house products and dressed meats from Kansas City, would be a fair comparison in your opinion as against live stock rates in that zone, this side of Kansas City?

A. Yes, sir.

Q. I notice that you charge in each case the same, $6.80 on Kansas City Terminals in and out, that is applicable to meat products and cattle?

A. It is the average of all cars handled.

Q. Kansas City is quite an important terminal point on your line isn't it?

A. Yes, sir.

Q. You make up trains for the West from there, do you not?

A. Yes, sir.

Q. And you run a great many empties in there?

A. Yes, sir.

Q. And these figures are made up by taking the entire expense of maintaining your terminals and dividing it by the number of cars switched in and out?

A. Correct.

Q. And as I understood you to say, applies only to freight business?

A. That is all.

Q. This has no relation to the passenger terminal at Kansas City?

A. No.

1544 Q. Against the dressed meats and packing house products you had a $4 charge, switching charge, to what company do you pay that charge?

A. We pay it in some cases to the Belt Line, Kansas City Belt line, and in some cases to the Suburban Belt Line, so called. I think in some cases to some of the other railroads, I am not sure about that.

Q. And between what figures do the switching charges on these belt lines range?

A. I think the minimum in the case of dressed beef——

Q. I mean in the case of Mr. Ripley's company, as the charges made by these other belt lines?

A. In the case of dressed beef, I think the minimum charge is $3.

Q. And what is it in the case of packing house products?

A. The same.

Q. Are you sure of that Mr. Ripley?

A. As to the minimum charge?

Q. Yes.

A. Well, I am reasonably sure.

Q. Yes.

A. I have assumed there, I stated in my testimony that I had assumed a $4 charge, but that was not the charge in all cases.

Q. Well, I was going to ask you Mr. Ripley, why it was in getting up a statement for comparison like this, you assumed the maximum instead of a fair average charge?

A. Well, the charge in the case of cattle was known and fixed.

In the case of dressed beef I did not give any instructions as
1545 to how that statement should be made up. I saw when I got it that $4 had been added. I therefore, took pains in my testimony to say that was the maximum.

Q. I know you did, and I was trying to find out how it happened to be here. That is the explanation?

A. That is the explanantion.

Q. Some wicked party put it in?

A. No, I think they put it in because it was the impression of the party who made it that that governed on all stock, and I still think that we pay that on most of the dressed beef we get.

Q. And could you have made up a statement showing what those charges actually are?

A. I will find out what they actually are.

Q. Thank you. That will, to that extent modify the burden you place on dressed meat and packing house products in these figures, that is true is it not?

A. Yes, sir, to that extent it would. Will you make a memorandum of these things you want me to get?

Q. Yes. I notice in these statements you charge the packing house products and the dressed meats with their proportion of all of the general operating expenses of your road, with the exception of car repairs, that is true isn't it?

A. Yes.

Q. And you also charge the dressed meats and packing house products with the proportion of interest and taxes?

A. Yes.

1546 Q. Well, those items together make up everything that could be charged against any species of traffic, they are general expenses. You make the same charges against live stock. Now, Mr. Ripley, I see that you also charge against packing house products and dressed meat, car mileage of one cent a mile. Why is that charge made?

A. Because I have previously deducted the cost of repairs in the case of cattle, of repairing our own cars, and I have allowed 6.4 mills for that.

Q. I understand that.

A. In the case of the private car we do not take care of those cars, but we do pay a cent mileage.

Q. Yes, and you also make any repairs that are caused by wrecks?

A. Yes.

Q. But that is a small item?

A. Yes.

Q. You charge this car mileage because you pay it out, as I understand?

A. Certainly. I charge in the other case the 6.4 mills because we pay it out.

Q. Well, we will see about that in a minute. You charge the one cent per mile because all of the packing house products and all of the dressed meats that are moved by you from Kansas City are moved in cars that you rent of the packers?

A. Yes, sir.

Q. Now, I notice by your annual report to which I have
1547 called your attention on page 29, an item of "hire of equipment $11,311"?

A. Yes, sir.

Q. That is the only item, is it not, Mr. Ripley, that would embrace this charge for car rental?

A. No, sir, it has nothing to do with it.

Q. What is the item embraced in car rental?

A. Car mileage.

Q. Car mileage. And what does this "Hire of Equipment" embrace?

A. Well, that embraces occasional borrowing of passenger equipment for large excursions or anything of that kind; occasional borrowing of locomotives or something of that kind; that is equipment borrowed from other roads for special occasions.

Q. Special occasions, and the items of car mileage is the one in which is embraced this expense?

A. Yes, sir.

Q. And that item I see is, $458,989.82?

A. Yes, sir.

Q. Now, you pay car mileage on a good deal of business other than packing house products and dressed meats?

A. Yes, sir.

Q. Necessarily, don't you. As near as I can figure it out from your report, you handle about 7,000 cars of packing house products and dressed meats. Can you tell me whether that is about right?

A. Well, I should think somewhere in that neighborhood. We handle a great deal of it over long distances, we handle a great deal to California.

1548 Q. This shows 36,797 tons of dressed meats and 49,888 tons of other packing house products. Figuring roughly at 10 tons of dressed meat and 15 tons of the other, it would make about 7,000 cars?

A. Yes sir.

Q. Well a good deal of that is handled through to the Pacific coast?

A. Some considerable of it is handled to the Pacific Coast, yes.

Q. Now, Mr. Ripley can you tell us what proportion roughly of that total movement of packing house products and dressed meat is handled between Chicago and Kansas City, or Kansas City and Chicago?

A. I cannot. We have had very little business between Kansas City and Chicago.

Q. You have had very little?

A. Yes.

Q. Well, now, you charge this large sum of nearly half a million dollars for car mileage, which includes these refrigerator cars into your general expense?

A. Yes sir.

Q. So that you put that as a burden upon the live stock business and also upon the packing house products?
A. Why not?
Q. Well, you do, don't you?
A. Yes sir.
Q. And you therefore charge the packing house and dressed meat business, with its proportion of all this money which you pay out including that half million dollars, and then in addition to that you charge the one cent a mile on the particular cars that are used
1549 in this service, making a duplicate charge, do you?
A. No.
Q. Just explain why it is not duplicated.
A. In the case of cattle I have deducted it; in the case of the dressed beef, I have allowed for a cent a mile mileage. Now——
Q. Now, just a moment, let me interrupt. You don't mean to say what you did just now, because you say you have deducted in the case of cattle. You don't mean that.
A. Yes, I have deducted the 6.4 mills.
Q. Well, I don't think you catch the question.
A. I see now what you mean.
Q. Yes.
A. You mean to the extent we paid mileage——
Q. In your general transportation expenses.
A. In our general expenses, that it has been charged twice?
Q. Isn't that so?
The COURT: Charged against both accounts?
A. Charged against both accounts.

Mr. SEVERANCE:

Q. But isn't it used twice as against packing house products and dressed meats?
A. I understand what you mean.

Mr. SEVERANCE: But if your Honor does not catch the point, the general expense is charged against both, and after charging the general expense, which includes the half million dollars
1550 against packing house products and dressed meats, as well as against cattle, he also charges the mileage against packing house products.
The COURT: He has no right to charge it all against the other, so he makes it even by charging one cent against the proper thing.
Mr. SEVERANCE: To make it even if your Honor please, he charges it both times.
The COURT: I understand.
Mr. SEVERANCE: The half million dollars is charged against the packing house products, and against the dressed meat and against the live stock, all three alike, because they are included in this average of 2.23 mills, or 2 mills per mile of expense of operation. Now, having charged it there against the packing house products and the dressed meats, he comes in again and charges it again on the mileage basis, making a duplicate charge.
The COURT: I understand.

Mr. COWAN: Wouldn't that depend if the Court please, on whether the 55 per cent. embraced that particular item?

Mr. SEVERANCE: I am not talking about the 55 per cent.

Q. Now, I will ask you this question: It appears by your annual report of 1905, that you paid out for car mileage $458,989.82, which is embraced in the items on page 29 of your report under the head of "Conducting Transportation." Now, it is a fact,
1551 is it not that in arriving at the cost of transportation over the Missouri Division, and the Illinois Division, as you have given it here respectively, 2.23 mills on one Division and 2 mills on the other, you have taken into account all the items under that head of Conducting Transportation, including this car mileage?

A. I think that is so.

Q. And therefore, when you charge against the movement of packing house products and dressed meat, the 2 mills on the one Division, and the 2.23 mills on the other Division, and in addition to that charge one cent car mileage, you are to a certain extent duplicating the charge, are you not?

A. I should have to go to the Statistical Department to see whether that is true or not, but I think it is. If it is, it would not affect the calculation one per cent.

Q. It would affect the calculation to a certain extent, wouldn't it?

A. Almost an unappreciable extent.

Q. Are you sure of that, sir?

A. Yes sir. The great bulk of the car mileage, the car mileage, the great bulk of it is paid to other railroads for cars which are run through over our line and is off set to a considerable extent by mileage which we collect from other railroads for our cars on their lines. The great bulk of the mileage is paid for that purpose. If we should deduct from that calculation all the mileage we have paid
1552 for use of private refrigerator cars, it would affect the calculation but very little.

Q. But it would however, to a certain extent affect it?

A. If your assumption is correct that it has been charged in both places, as I am inclined to think it may have been. If you will make a memorandum, I will find out whether it was or not.

Q. Now, Mr. Ripley, this charge of Belt Line switching in Kansas City, do you know whether all the roads pay that or pay any charge I mean to the belt lines?

A. Some of them do not?

Q. Some of them do not? Well, now, in arriving then at a figure, a fair average figure as to the burden that should be put upon these different commodities, moving from Kansas City to Chicago in ordinary railroad business, you would have to absorb this charge and govern your rates on the basis of the more fortunate line which reached the industry, wouldn't you?

A. Yes.

Q. And if that switching charge of $4 a car was eliminated, it would of course, still further reduce the operating charge upon those cars?

A. If it were eliminated, yes. I have not attempted to pass any judgment on other people's condition.

Q. I know but you have given some figures here from which an inference is to be drawn, and I want to analyze it.

Now, Mr. Ripley, this matter of interest and taxes—the
1553 interest and taxes are computed upon all of the investment of the company are they not?

A. Yes sir.

Q. You pay taxes upon your whole investment?

A. Yes sir.

Q. And you pay interest upon all of the securities which you have had, the proceeds of which were used to buy these properties?

A. Yes sir.

Q. That includes of course, the stock cars that you own as well as everything else?

A. It includes everything.

Q. Now, I notice in this report, under the head of "Freight Cars in Service, June 30, 1905," 3,803 stock cars. That is correct isn't it?

A. Yes sir.

Q. And you also have 4,516 refrigerator cars, but do not use any of those refrigerator cars in this packing house service, I understand?

A. No.

Q. Total freight cars, 39,172 of which 3803 would be in round numbers, 10 per cent. Now you have charged the packing house products and the dressed meats in making up this computation with the interest and taxes upon these stock cars, the same as you have everything else?

A. Yes sir.

Q. So that you are putting on the packing house product and dressed meat, the burden not only of furnishing refrigerator
1554 cars at one cent a mile, but the additional burden of its proportion of the stock cars that are furnished for the movement of live stock. That is true, is it not?

A. Yes sir, that is true. You might with the same propriety put in all the interest on all of our stock yards, all our local stock yards which are devoted to the live stock business entirely.

Q. I am coming to that, I am going to do that before I get through.

A. All right.

Q. At least, I am going to try to, I don't know whether I will or not. Now, you have also included in your transportation cost, the cost of moving all of these stock cars as well as every other kind of traffic?

A. Certainly.

Q. In making these averages?

A. Certainly.

Q. Now, as I understood you to say a few minutes ago, the only live stock that is actually moved over your lines to any substantial

extent on this 20 cent rate, is the live stock originating this side of Kansas City within that belt?

A. I think so.

Q. Now then don't you think in arriving at a comparison between the profits and losses, there unfortunately seems to be a loss here, in transportation as between the packing house products out of Kansas City, and the live stock that is moved on the same rate you ought to compare the movement of live stock in that zone this side
1555 of Kansas City with the Kansas City packing house products and dressed meat rather than to compare the movement of dressed meats and packing house products with movements from Kansas City, when, as you stated there are no movements on that basis.

A. What I was asked to do was, to endeavor to show the relative cost. I don't know how I could better attempt to demonstrate relative cost than by taking the same rate on each; it would not make any kind of a demonstration if I had a different rate on each.

Q. I am examining now with reference to the movement of stock and packing house products, and the stock moving on the 20 cent rate is this side of Kansas City?

A. Yes sir.

Q. Now, in moving that stock at country points, aren't you subject to certain expenses which are peculiar to the stock itself?

A. Yes.

Q. And to which other branches of the traffic are not subject?

A. Yes.

Q. What are they?

A. You have got to maintain stock yards, which is in effect, our depot for live stock, just as we have to maintain our other depot for other things. We have to bed the cars, which costs something, 10 or 15 cents a car, perhaps. And I have already explained that we have to stop our trains and do more or less switching; we have to switch the empty cars in to begin with, and have to switch
1556 the other cars out, but those are expenses which are incident to almost any kind of business.

Q. Now, let us see if they are. Take the matter of stock yards, they are used for no purpose except loading stock, are they?

A. No purpose whatever.

Q. I beg pardon?

A. No purpose whatever, except that.

Q. Can you tell, Mr. Ripley, the average cost roughly, of country stock yards along your line from Kansas City to Chicago?

A. From eight to twelve hundred dollars.

Q. And does that include the water facilities?

A. Ordinarily yes, except where you have to put down an expensive well.

Q. In some places you have to put down separate wells, apart from your water tank?

A. Yes, in some places. Those are usually surface wells. They are not expensive.

Q. And in some places do you buy water from municipalities?
A. Possibly, I do not recollect any place where we do that this side of Kansas City. Possibly sometimes it may be cheaper to do that than to put down a well.
Q. Could you find out the total, and file as a statement with your testimony, the total cost of the stock yards owned by
1557 your company between here and Kansas City?
A. I suppose I could. That would take sometime, I suppose I could do that.

Whereupon a recess was taken until 2:00 o'clock p. m. of the same day, Friday, September 29, 1905.

1558 SEPTEMBER 29, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon E. P. RIPLEY, resumed the stand for further cross-examination by Mr. Severance, and testified as follows:

Q. Mr. Ripley, you will have those figures here a little later, will you, that we asked for this morning?
A. Yes sir.
Q. Now in getting up tables to show a fair comparison between the net profits in handling live stock and dressed meats on the one hand and cattle and hogs on the other, you have deemed it proper to put in as a special burden on the packing house products and dressed meats products the mileage paid for the refrigerator car. Now, would you not say that, in fairness, there should be put as a burden upon the live stock traffic in fair interest upon the investment in these cattle pens or stock yards that you have described?
A. If the investigation pertained to local cattle business, yes sir.
Q. Well, assume that it does, what rate of interest would be a fair rate to apply to that, 4 or 5 per cent.?
1559 A. No, it should be more than that, just as it should be more than that for any wooden structure that is constantly deteriorating. That would be 7 per cent. or 8 per cent.
Q. And that would include depreciation and interest?
A. Yes sir.
Q. Now, in the shipment of local live stock, Mr. Ripley, you mentioned on your direct examination, if I am not mistaken, the fact that your company had to bed the cars. That is done with what material?
A. Sand, ordinarily.
Q. How much sand per car?
A. Oh, enough to cover the bottom, perhaps from 5 to 7 inches.
Q. The full bottom of the car?
A. Yes.
Q. Have you any idea how much that would weigh?
A. No, it might add possibly a ton to the weight.
Q. These 36-foot cars are 36 feet on the inside or outside?

A. Well, they vary; some are 36 feet inside and some are 36 feet outside. Generally they are 36 feet inside.

Q. And how wide inside?

A. 8 feet.

Q. Can you give an estimate or state in figures in any way, the average or about the average cost to you of this sand laid down at the country stations where it is used?

A. No, I cannot. It varies, of course, with the distance which we have to haul it.

1560 Q. Well, that is a burden that should properly be added to the cost of transporting local live stock, is it not?

A. Yes.

Q. What would you say it would cost, as much as $1.00 a yard, a cubic yard?

A. No.

Q. Would it cost 50 cents a cubic yard?

A. Possibly.

Q. Wouldn't you think that would be a fair estimate of cost taking the whole line together between here and the Missouri river?

A. That would be a mere guess, but I should think it might.

Q. Now, it is your custom, is it not, Mr. Ripley, to give free transportation to drovers who accompany cattle to market and hogs to market?

A. Under certain rules, yes.

Q. What are the rules?

A. We give return transportation with two cars, two cars belonging to one owner, or, I think transportation with five cars, I cannot quite — the rule exactly.

Q. You have the same rule that the other roads have in that regard, don't you?

A. Yes.

Q. That is you carry the drover forward to market in the stock train, do you not, and return him on a first class passenger train?

A. Yes.

Q. What is the passenger fare from here to Kansas City over your road?

A. $12.50, I think.

1561 Q. And is that rate substantially less at these stations within 100 or 150 miles?

A. Yes, it is based on three cents a mile, practically.

Q. $12.50 would not be 3 cents a mile, would it?

A. A little less to Kansas City than 3 cents, but between here and Kansas City, it averages very nearly 3 cents.

Q. It is really 3 cents a mile until you get up to a point where you have to make it a little below the Kansas City rate, isn't it?

A. Substantially that.

Q. It would at least be $10.00 then into this zone that you spoke of?

A. Yes, average that, probably.

Q. Now in bringing the drovers to market they are transported in cabooses, are they not?

A. Yes.

Q. Do you have those cabooses arranged with bunks so those men can sleep?
A. Yes, ordinarily there is a rude bunk for them, not always.
Q. You have specially designed cabooses for drovers?
A. Yes.
Q. Containing about how many bunks?
A. Well, four to six.
Q. Furnished with pillows and blankets?
A. No.
Q. Do you furnish anything except the naked bunks?
A. Nothing but the bunk and ice water.
Q. Bunk and ice water, is that what you said?
1562 A. Yes.
Q. That is a cheerless ride, isn't it? Well, now, you say you furnish this transportation to any man shipping two cars?
A. Yes.
Q. So that in that case a shipper would get a free ride one way and back for each two cars of stock?
A. Yes.
Q. Now that is a burden that is not imposed upon shipments of packing house products, is it, or dressed beef?
A. Yes.
Q. Do you know how many loads, carloads of live stock are picked up and shipped in between Kansas City and Chicago, on your lines?
A. No, I don't.
Q. Well, you would say, wouldn't you, in order to make a fair comparison of the respective burdens on these classes of commodities, that there should be charged against the live stock shipments, the passenger fares that you have mentioned?
A. In so far as they represent people who would otherwise travel and pay fare, yes.
Q. Well, have you any way of knowing whether they would or not?
A. No.
Q. You know that they do pay fares, don't you? Sometimes they come in and get the ride in and in going back, pay their fare?
A. Yes, they do that sometimes. We have no way of tell-
1563 ing how many of these people come because they can ride free and how many come for purposes of their own other than that.
Q. They are treated the same as other passengers on your passenger trains?
A. Yes.
Q. And whether they ought to be with the stock or not, they are treated the same as legitimate drovers on the stock trains?
A. Yes.
Q. And they get transportation?
A. Yes.
Q. And that being the case, don't you think that that is a fair charge to make against the live stock account?
A. I have already stated, to the extent that they represent people

who would otherwise travel and pay fare, it is a fair charge against the live stock.

Q. You cannot know the mental process of every man that boards one of your trains so as to be able to tell whether he would have come under one condition or the other?

A. No, but when a drygoods man comes up here to buy drygoods, it is fair to assume that if it was not for the fact that he could use the stock pass, he would come and pay his fare. The privilege is abused more or less.

Q. A good many country merchants and other people—I *I* think it was testified to here by somebody that even lawyers were known to come in on them.

A. It is not impossible.

Q. Now those people are at times injured, are they not,
1564 while being transported by you, the same as other passengers?

A. Occasionally.

Q. And when they are injured you have to pay for those injuries?

A. Yes.

Q. Are you able to state the amount of money that you have been obliged to pay within the year ending June 30th, 1905, on account of injuries to persons riding in this manner?

A. No, not seggregated from anything else. The amount we have paid for injuries to persons is stated in our report.

Q. Yes, I find about one per cent. of your freight receipts $433,-112.59, is it not, for injuries to persons?

A. That embraces injuries of all kinds and under all conditions. It embraces injuries to employés, injuries to trespassers and people at stations, and people in the shops.

Q. Now, there is more danger of injury to a man riding on these stock trains than on the ordinary passenger train, is there not, more liability to injury?

A. Well, that is questionable, I hardly think so.

Q. Do you think that you handle the cabooses in as gentle a manner and that people are as much protected from injury in them as in the passenger cars?

A. Not exactly that, but the injury to passengers largely are to people traveling in the forward part of the train, that is, ordinarily.

Q. The forward end of the train?

1565 A. Yes. There is a greater number of casualties there than there are on the rear end.

Q. Sometimes there are rear-end collisions?

A. Sometimes there are rear-end collisions, but they are much less frequent than derailments or head-end collisions, in which case, those people in the rear end of the train are in a safer position.

Q. Whatever that does amount to—You say you are unable to state what it is—That is a burden that should, in the making of the comparison, such as you have undertaken to make, be fairly charged upon the live stock traffic, is it not?

A. Yes.

Q. Now, in giving your percentage on the cost and depreciation

of these country stock yards, you did not include in that the cost of the maintenance of those stock yards, did you?

A. Yes.

Q. I mean the cost of keeping them clean, and that sort of thing?

A. Well, that is not appreciable. Practically, no cost.

Q. Who does the work?

A. The section men, what little there is to do. There is very little to do.

Q. What is your expense in cleaning live stock cars?

A. I am unable to say what it is per car. There is a cost for cleaning them, and a cost in some instances for disinfecting them as well but that is all included in our general expense which we have taken into account as to all kinds of business, in that statement.

1566

Q. But that, of course, is an expense that is peculiar to this kind of traffic?

A. Oh, yes, there are expenses that are peculiar to all kinds of traffic.

Q. Name some expense peculiar to box cars that is in any way analogous to the expense of cleaning live stock cars and the trouble of doing it?

A. We have to clean our box cars just as we do our live stock cars. We don't have to take so much out of them, but they have to be swept and provided for.

Q. It costs a good deal less to sweep out a box car than it does to clean out the dirt in a cattle car, doesnt' it?

A. Yes. On the other hand, it costs a good deal to keep a box car tight and you don't have to keep a cattle car tight at all.

Q. Aren't cattle cars more liable to injury in transit by reason of the live animals being in them, than the box cars in ordinary traffic?

A. The average cost of maintaining a cattle car is not greater than that of maintaining a box car.

Q. I mean actually maintaining it, keeping it in repair?

A. I think it is slightly less but that is a mere matter of opinion and a mere matter of judgment. We don't segg*r*egate in our accounts the different kinds of cars.

1567

Q. Whatever this expense is of maintaining country live stock yards and repairing them and the interest on their cost and the water used for those yards, the bedding of stock cars, the cleaning of stock cars, and these other expenses that I have called your attention to, they are all charged in this statement that you have made, charged up equally against the packing house product and dressed meats on the one hand and the live stock on the other?

A. Yes.

Q. Now, don't you have to build at country stations in connection with these stock yards, special side tracks to run on?

A. No, not often. Ordinarily, the stock yard is located on the house track; that is, the track which serves the freight house ordinarily reaches the stock yards as well. Once in a while it is necessary to put a spur to the stock yards, but as a rule, the two are on the one track.

Q. In this statement I notice you figure the gross weight in the case of dressed meats as 97,000 pounds and the weight of the contents of the car 21,000 pounds, leaving a balance of 76,000 pounds. In the case of packing house products you figure the gross weight as 103,000 pounds and the contents 28,000 pounds, leaving 75,000 pounds. Why do you make that difference of 1,000 pounds?

A. A difference of a thousand pounds?

1568 Q. Yes, as between the weight of the car in the case of packing house products and dressed meats?

A. I don't think it was intended to make a difference in the weight of the car, it is a difference in the weight of the contents.

Q. I will give you the figure again. In the case of dressed meats, the gross weight is given as 97,000 pounds and the net weight 21,000 pounds. That would leave a balance of 76,000 pounds for the car.

A. Yes.

Q. In the case of packing house products the gross weight is 103,000 pounds, the net weight 28,000 pounds, leaving a balance of 75,000 pounds for the car, a difference of 1,000 pounds.

A. That is the figure on the weight of the car both ways.

Q. Certainly, I understand that.

A. In one case, the car running empty, and in the other case the car running full.

Q. I understand that. That is so in both cases. In the case of the dressed meat as well as the packing house product, that is so.

A. Well, let us take the case of the dressed beef, just give those figures again.

Q. 97,000 pounds and the contents 21,000 pounds.

A. That leaves 76,000, each way 38,000 pounds. In the case of the packing house product which is given as——

Q. 103,000 pounds, less 28,000 pounds which would be

1569 75,000 pounds or 37,500 pounds each way.

A. Well, I am unable to account for that. There is apparently a mistake of 1,000 pounds there.

Q. I did not know what it was; I thought perhaps you could explain it. That makes a little disproportion as between the contents and the weight of the car. Now, you said this morning, I believe that all packing house products, as well as all dressed meats are shipped in refrigerator cars.

A. I don't think I said that all packing hose products are shipped in refrigerator cars. They are not always so shipped, but they are generally.

Q. Isn't it a fact that a good many car loads of packing house products are shipped in ventilated cars, for instance, or cars that belong to your own road?

A. I don't think we get any of any consequence in our own cars. It is nearly all tendered to us in refrigerator cars or in ventilated cars which carry the same mileage.

Q. Is it not a fact that you ship products in your own cars at times?

A. To some extent, yes.

Q. You have made no allowance for that. You have charged one

cent a mile in each case against the products, the same as against the dressed beef, haven't you?

A. Yes.

Q. In order to get at this in an exact way, there should be an allowance for such of the packing house products as are

1570 shipped in your own cars?

A. If any, yes.

Q. You stated that you thought there were some?

A. I don't think there are, from the Missouri river to Chicago.

Q. You don't think there are any?

A. I do not think there are any.

Q. I suppose you could ascertain that?

A. I think so.

Q. I would be glad if you could ascertain that so that we could find out. Now in figuring the gross ton miles at two and twenty three one hundredths mills, and two mills respectively on those two divisions, that is the cost, I mean, not the gross, you figure on the cost of all locomotive movements, don't you?

A. On that division.

Q. Including a full train or a half train or a locomotive and a caboose or a locomotive without a caboose?

A. Yes. That is in figuring the train miles—Not train miles, they are figured on car miles. The movement of the locomotive, of course for that would not be figured into the divisor.

Q. Those are ton miles?

A. Yes.

Q. Does it make any difference then whether you move a large train or a small train? It is all figured in at the cost of moving that car?

A. Yes.

Q. Well, I was all right in my premises, with the exception of the locomotive?

A. Yes.

1571 Q. It is cheaper to haul in proportion, a heavy train than it is a light train, isn't it?

A. Yes.

Q. Packing house products weigh heavier than live stock?

A. Per car, yes.

Q. Is it not cheaper to haul a train of packing house product then than it is to haul a train of live stock per car?

A. You mean of equal weight?

Q. Yes. No, no, not a train of equal weight, I don't mean that?

A. I don't think it is any cheaper to haul a ton of the one than it is to haul a ton of the other.

Q. Isn't the relation between the dead weight that you haul different in the two cases?

A. Yes. We haul very much less dead weight in the case of a car of live stock than we do in the case of a car of packing house products.

Q. That is you mean, that, in the case of a car of live stock, the

car weighs more in proportion to the load than it does in the case of packing house products?

A. No, I think it weighs less.

Q. Which weighs less?

A. The live stock car weighs less in proportion to the low. I beg your pardon. You asked about packing house products; no. As to dressed beef, yes.

Q. I am talking about packing house products.

A. No, not as to packing house products.

Q. Is it not a fact that in hauling packing house products
1572 you haul more weight for the amount you get paid for than you do in hauling live stock?

A. Yes, I think that is true. That is, there is more dead weight in the case of live stock than there is — the case of packing house products.

Q. My question was turned round, I just got that confused. To put it in a crude way, you haul more car- in proportion to contents when you are hauling live stock than you do in hauling packing house products?

A. Yes.

Q. That makes the transportation of the contents of the packing house car then cheaper to the railroad, does it not, than the transportation of the contents of the live stock car?

A. Everything else being equal, yes.

Q. And in arriving at the general average of the cost per ton, if you had no traffic to handle except live stock on the one hand and packing house products on the other, you would find that the live stock cost more per ton per mile (measured on the basis of your receipts)—that is, your profits are less than they would be in the case of the packing house products?

A. Other things being equal, yes.

Q. You did not take anything of that sort into account in making up this statement?

A. No.

Q. Now, Mr. Ripley, in the case of live stock brought in
1573 from Kansas City, if there should be any shipped from there, either on the proportional rate or on this full rate, you are at the expense of loading it?

A. We pay the stock yards 25 cents a car for loading.

Q. In the case of the packing house products, the packer loads the car and he also does in the case of the dressed beef?

A. Yes.

Q. In getting up this estimate you have not made any charge against live stock of that additional burden of loading, have you?

A. Yes.

Q. Where is it?

A. It is included in our general expense.

Q. Well, now, is it not included against both of them then?

A. No, sir.

Q. Why not? Tell us why? You have charged some the same amount for terminals in each case?

A. We have charged in each case the same amount for terminals but in the one case the switching charges paid to other roads are not included in that terminal expense, whereas the loading charges at the stock yards and the maintenance of the tracks and the switches into the stock yards are all included in our general expense.

Q. Yes, but you have charged this loading charge against the packing house products and against the dressed meats the same as you have against the live stock, in this statement, and that
1574 is included in your general expense, I suppose?

A. Oh, yes, if you mean that expense which we are at in order to get hold of the live stock is included in our general expense, yes.

Q. Well, I mean just what I have said. You have stated that you paid 25 cents a car for loading live stock?

A. Yes.

Q. Now, you have considered that 25 cents in arriving at your terminal expense?

A. Yes.

Q. Now, you have charged exactly the same terminal expense against packing house products and dressed meats that you have against live stock?

A. Yes.

Q. Then I am correct in saying that you have not apportioned that burden of loading to the traffic that it belongs to, but you have spread it over all the traffic?

A. Well, strictly speaking that is correct.

Q. We are speaking strictly here. Isn't that, being a special burden imposed upon the live stock, something that should be taken into account the same as you take into account the one cent per mile mileage in the case of the packing house, for which you have made a specific charge?

A. Well, putting me on the defensive in regard to my statement, I think that the way it is made up is fair. If you would like to have me tell you why, I will tell you.

1575 Q. I am asking you the questions. I suppose Mr. Cowan will ask you why later on.

Mr. COWAN: I think the witness has a right to explain that at this point.

The COURT: Well, the court will ask you why.

A. There are certain expenses that are incident to both kinds of business. It is quite true that we have disregarded those in making up this statement in which we charge all or our general expense,—spread all our general expense over both classes of business. It is true that we do pay on live stock a loading charge that we do not pay on dressed beef. It is also true that there are a good many expenses incidental to the hauling of packing house products and dressed beef which do not apply on the live stock.

Mr. SEVERANCE:

Q. What are they?

A. In the first place, the refrigerator cars are very heavy and they

are much more liable to accident. They cost us a great deal more in wrecks than the live stock cars do. We have had some trouble on account of their construction with broken axles, derailments of the refrigerator cars, more trouble on that account with the refrigerator cars belonging to private parties than we ever had on our own cars on account of their inferior construction, and it costs us a great deal more, a great deal of money outside of the repairs on the car
1576 itself on account of the damage to our own equipment.

Q. Do you claim that under your contract you are liable for broken axles on refrigerator cars? Isn't the cost of that repair borne by the packer?

A. It may be a part of the repairs that the packers have to make, but they do not have to repair the rest of our equipment that is broken or damaged by reason of that broken axle.

Q. You have stated here that you are obliged to pay out money for broken axles on these refrigerator cars, and I am asking you whether or not that is not an expense that you do not pay at all, and that it is paid by the packer?

A. Theoretically, if a broken axle can be proven to be a defect in the car, the packer will have to repair it.

Q. Well, isn't that so practically?

A. Well, it may be that he does practically, but that does not compensate us for the collateral damage that it originates.

Q. You were speaking about repairs to the interior of the car?

A. I did not say anything about the interior.

Q. I understood you to say something about the interior of the car.

A. No, I said nothing about it; I said by reason of the inferior construction.

Q. Well, as a matter of fact, you are not responsible for any damages to these cars that you lease at one cent a mile unless
1577 the injuries are caused by a wreck or by carelessness on the part of your company in its operation, isn't that so?

A. That is the theory.

Q. That is the contract, isn't it?

A. I don't think there is a contract in existence on the subject.

Q. Mr. Dawes suggests that I ask you whether it is not under the Master Car Builders Rules.

A. Under the Master Car Builders rules, the owner of the car is responsible for any defect in the construction of the car and the road that is handling it, or the operating road, is responsible for any accident that occurs through negligence or by reason of inferior track or bad handling or anything of that kind.

Q. Now, have you given the only reason that you are able to give why you have put upon the rest of your traffic, including the packing house products and dressed meats, the burden of loading cattle in cars at Kansas City?

A. Well, I have said that all things considered I think that our average expenses as we have taken them there, constitute a fair criterion by which to judge; notwithstanding that in both cases, both

classes of business there are some expenses that are not incidental to the other.

Q. Can you name any other in connection with refrigerator
1578 cars, than you have stated that are not incidental to the other cars?

A. Well, between here and Kansas City, we are not called upon to provide any special facilities for the packing house business.

Q. Well, it is that country that we are talking about.

A. Between Kansas City and the west, however, we are obliged to have quite considerable investments in icing stations and that sort of thing.

Q. I find on page 29 of this Annual Report that you paid out in the year ending June 30th, 1905, the sum of $107,286.12 for loss and damage to live stock?

A. Yes.

Q. Now there are certain kinds of loss and damage in the transportation of live stock, are there not, which are not incident to the transportation of ordinary dead freight or packing house products or dressed meats, such as damages for delay in failing to reach a market on time.

A. Well, we don't admit much of that unless it is a case of negligence. That damage to live stock includes stock killed on the right of way. It does not represent damages paid on property in transit.

Q. Well, it includes both, does it not?

A. It includes both. It does not represent alone property in transit, exclusively.

Q. Is it not a fact that you do pay to live stock shippers damages for failure to reach the Chicago market on time as per con-
1579 tract?

A. Where it is due to the negligence of our own servants, yes.

Q. Now, is it not a fact that you do not pay on any packing house products or dressed meats, any damages merely on account of delay, where the delay does not cause a spoiling of the product by reason of the lack of ice?

A. So far as I know, we do not. I think there have been cases where it has been paid.

Q. Where it has been merely for delay?

A. Yes.

Q. To whom?

A. I don't know.

Q. When?

A. Do you mean as to dates?

Q. We have a general cut-off in this case so that we do not go back of the time before Judge Grosscup's injunction.

A. I have no knowledge that it has been paid, and I don't think it has been, so far as we are concerned.

Q. Now, does the cost per ton mile increase as you increase the speed of the train?

A. Slightly.

Q. Did I understand you to say in answer to Mr. Cowan, that you

ran your packing house trains as fast as you ran your live stock trains?

A. Substantially on the same time, yes sir.

Q. What time do you load live stock shipments at these points within 100 miles of Kansas City, when it is coming to Chicago?

A. They are loaded in the afte-noon and reach Chicago the
1580 second morning.

Q. Do you stop to feed in transit?

A. No.

Q. How do you get in within the 28 hours then?

A. Our stock trains arrive about 12 o'clock.

Q. About midnight?

A. Yes, from midnight up to 2 or 3 o'clock in the morning. They are on the market the same morning.

Q. How about the packing house products and dressed beef that you transport?

A. They make substantially the same time.

Q. Are they schedule trains?

A. No, our stock trains are *are* not schedule trains; neither of them are scheduled.

Q. What time do they ordinarily leave Kansas City?

A. Kansas City about noon, I think, and arrive here about the same time the stock trains do, along about midnight so as to be delivered the same morning.

Q. You say you load your live stock in the afternoon and get here at midnight and you load your packing house products at noon and get here at midnight.

A. You are asking me about the local live stock which originates all the way from 25 to 150 miles this side of Kansas City; consequently, it has a less distance to travel.

Q. Well, you do ship live stock from Kansas City, of
1581 course?

A. Well, there is some.

Q. How about that?

A. I think that leaves ordinarily at about the same time as the packing house product, possibly a little later.

Q. Can't you find out definitely about that?

A. There is not any definite rule about it. I can find out what happened last week or this week but there is no definite rule about that. Trains are made up out of Kansas City or Chicago or any large center they are made up as we can get them. They are not run on any schedule time. If we can get a train, we run it.

Q. Don't the trains leaving Kansas City, to reach the Monday market (that seems to be the big market) don't they leave there at about the same time every week? If so, what time?

A. Well, I don't think they leave at the same time. Stock is not always ready at the same time, and we are not always ready to send it at the same time. It leaves so as to reach Monday's market but it may be from one to four hours' difference in the time of its leaving Kansas City.

Q. Can you give me an idea of between what hours of the day this one to four hours would be figured?

A. I should say ordinarily, between 2 and 6 in the afternoon.

Q. Leaving Kansas City between 2 and 6 and reaching here about midnight the second night?

A. Yes.

1582 Q. In the case of the packing house trains, you leave at noon at Kansas City——

A. Oh, no, they are taken out of the yards about that time. If we had any packing house product east of Kansas City, which we don't, not very much, we would put that and the stock together.

Q. Then as a matter of fact, you don't handle much packing house product east of Kansas City?

A. Very little.

Q. You do handle packing house products to the Pacific coast?

A. Yes.

Q. From what points?

A. Kansas City, St. Joe and Omaha.

Q. Any from Chicago?

A. No, very little, some.

Q. What is the difference, if anything, in the rate between Chicago and San Francisco, for packing house products, and Kansas City and San Francisco?

A. I think they are the same but I am not certain.

Q. You are pretty sure they are the same, are you not?

A. No, I am not sure.

Q. But it is your opinion they are the same?

A. That is my opinion.

Q. Do you regard that as a discrimination against Kansas City that you ship 400 miles further practically at the same price?

A. I don't think so.

Q. You would not discriminate if you knew it?

A. No.

1583 Q. Now, with reference to these intermediate rates—— It is suggested that I ask you also the rate from Omaha, if you know, to San Francisco.

A. I think that is the same as Kansas City.

Q. The fact is that the rates to San Francisco, and possibly also to Los Angeles——

A. Yes.

Q. —on packing house products is the same from Chicago and east of the Missouri river packing centers?

A. Yes, I think it would be the same to New York if we were running there.

Q. Now, with reference to charges on the basing rate from the Missouri river, this side of there, you think it is quite proper and justifiable, do you not, to charge the same rate, to charge this 20 cent rate from these country stations this side of Kansas City, while you move the live stock that comes through from the west, from Kansas City to Chicago, on a proportional rate, which is considerably less?

A. I think so.

Q. Kindly state the reasons why?

A. Well, I think the rate of 20 cents from intermediate stations, is more than reasonable to the shipper. It is less than reasonable to the carrier. It is out of line with other rates in the same territory and I think that it discriminates in favor of live stock as against everything else. The fact that the packing house product is

1584 carried from further west——

Q. I am not asking about the packing house product.

A. The fact that live stock is carried from further west and pays a less rate, proportional rate from Kansas City to Chicago, has nothing to do with the case; it has no bearing on the question of what the rates should be from these stations in Missouri. The question between these people and the railroad is whether the rate is in itself reasonable.

The COURT:

Q. Is what?

A. Whether the rate is in itself reasonable. It is not their affair what other people pay.

Mr. SEVERANCE:

Q. And that is so as to all commodities?

A. That is so as to all commodities.

Q. And all places?

A. Yes, except so far as the rates on one article may be injurious to the man that is shipping another. In this instance, that is not the case. There is no injury inflicted here on anybody east of Kansas City, because of the 20 cent rate, notwithstanding that the cattle originate west of Kansas City and are carried through for less.

Q. You do not think there is any injury being inflicted to any person by reason of those rates?

A. I do not, except the railroad.

1585 The COURT: I would like to hear that answer.

(The two preceding answers were then read.)

The WITNESS: Excuse me, that is somewhat misleading. Change that to read, "Notwithstanding the fact that cattle originating west of Kansas City are transported from Kansas City to Chicago for less than 20 cents." As I gave the original answer it would appear that cattle originating west of Kansas City are taken through for less than 20 cents, which is not the case in any instance. They simply pay the railroads east of Kansas City less than 20 cents.

Mr. SEVERANCE:

Q. That is you mean that the proportional from Kansas City on to Chicago is less than 20 cents?

A. Yes.

Q. But if the cattle originate at points west of Kansas City it is more than 20 cents?

A. Yes.

Q. And none of those rates that we are discusing here, and I am

examining you about in your opinion, discriminate against anybody, except as you say, against the railroads?

A. That is right.

Q. You stated this morning in explanation of the fact that you had made these statements up on the basis of the 20 cent rate on each class of commodity (instead of making them up on the pro-
1586 portional rate so far as live stock was concerned) that you did it upon request, upon a request to make them up on the 20 cent basis.

A. Excuse me, I did not say that.

Q. What did you say in that connection?

A. I don't recall what I said, but I certainly did not say that because I had no such request. I said that it seemed to me that, if you are going to make a comparison, that you should take the same rate on both commodities.

Q. Then you made it up without any request?

A. I made it entirely of my own motion. It is perfectly easy to change that statement by using other figures, but in making a comparison, I took, of course, the same rate.

Q. You took the same rate but you eliminated what you pleased in one case and left it in in the other?

A. I endeavored to make it fair in both cases. I had no object in doing otherwise.

Q. Now you say that this 20 cent rate that you have in force on live stock is altogether too low.

A. Yes.

Q. Then do you regard the 23½ cent rate that the other roads have in, as too low?

A. I do.

Q. Then why was it that you put a 12 cent rate in force at the time these packing house rates went in? You put in a 12
1587 cent rate, did you not, on live stock from Kansas City and intermediate points to Chicago?

A. We did for a while. Well, without going into it at any very great length, it occurred to us, when this reduction was made in the packing house product and dressed beef, that it was so outrageous that it ought to be fought out. Our first disposition was to fight it out.

We put in a rate of 12 cents, thinking possibly it would bring about a reform, and without having made very many figures on it, simply guessing at it, it was our opinion that the 12 cent rate on cattle was about as good as the 20 cent rate on packing house product; but we modified our position in that regard, after a little while, and advanced our rate.

Q. As a matter of fact, when you put that 12 cent rate in, you put in a rate that was not very far from the proportional rate anyway, the proportional rate on which cattle were moved from Kansas City, not much lower?

A. Why, yes.

Q. Well, anyway, you will have the figures on that later?

A. Yes, I will have the figures later.

Q. Is it not a fact that in the summer time the railroads go to the expense of spraying the hogs and possibly the cattle also, with water, along the line?

A. In very extreme weather that is done. There is very
1588 little expense to the railroad there except in the water. It is generally done by the men in charge and sometimes by the train men.

Q. Well, it takes water to do it?

A. Yes.

Q. And you have to delay the train while that is being done?

A. It is generally done at division points where there is more or less delay in any case.

Q. Are you sure of that?

A. Well, I know we don't do it anywhere else.

Q. You would not do it anywhere else?

A. We don't do it anywhere else.

Q. Does it not add to the delay at the division point?

A. Possibly a little; it might or it might not. That depends on how much there is of it to do, and how much the train would ordinarily be delayed.

Q. Suppose the hogs are getting heated and are liable to be damaged between division points; would you not stop the train and spray those hogs?

A. Well, it would have to be a very extreme case. I don't think we ever do it.

Q. Packing house products are hauled out of Kansas City, are they not, by the other roads in solid trains?

A. I think so.

Q. But not by your road, because you have not enough of
1589 the traffic to make it pay to do it.

A. That is right.

Q. Now, while you state that the rate on packing house products ought to be a great deal higher, and that the business is transacted at a loss, is it not a fact that you have soliciting agents who almost daily visit the packers and solicit shipments?

A. Very likely.

Q. Now, you say that you were formerly engaged with the Burlington system and the Milwaukee & St. Paul system?

A. Yes.

Q. Now it is a fact, isn't it, that, on those two systems the railroads lose the use of their live stock equipment to a very considerable extent by reason of the fact that cars are set in at country stations to be loaded, and that they lie there for considerable periods of time before they are loaded out?

A. That is more or less true.

Q. That is more or less true of all roads, isn't it?

A. Yes.

Q. Have you any special place where your stock cars are cleaned?

A. Yes, I know where they are cleaned at Kansas City. They are cleaned out west of Kansas City. Here in Chicago, they are cleaned up at Corwith where our yards are.

Q. Cleaned by men in your own employ?
1590 A. Yes.
Q. Do you keep regularly a force of men for that purpose?
A. Not for that purpose.
Q. And in winter time, that is rather expensive, the cleaning of stock cars, isn't it?
A. Sometimes, when it is frozen, it is a rather troublesome thing to do.
Q. Do you use a locomotive and steam?
A. No.
Q. Never?
A. I don't think so.
Q. You have to take them how far in order to get them to this cleaning place?
A. From the stock yards a couple of miles.
Q. And then they are brought back over the same track?
A. If they are going to the stock yards, yes. If they are loaded out, no; or if they are sent west empty, no. As a rule they are taken out to the stock yards and not brought back, because there is nothing in the stock yards to load them with.
Q. Is that portion of the yard where you clean your cars built on purpose for that work?
A. No.
Q. What other work is done there?
A. All of our yard work, all of our making up of trains.
Q. That is one of the items of work that is carried on there?
A. Yes.
Q. Do you have a special part of the yard where that is
1591 done?
A. Yes, because we are using it for filling.
Q. Now, you stated that it was the universal rule that the manufactured product should take a higher rate than the raw material?
A. I said it ought to be.
Q. I understood you to say it was.
A. I said it was the general rule and it ought to be universal but it could not be.
Q. I did not so understand you. Then this is not the only instance where the raw material takes a higher rate than the manufactured product?
A. No.
Q. The question of bulk has something to do with fixing the rates, does it not?
A. Yes, bulk as compared to weight has a great deal to do with it.
Q. So that if the raw material is more bulky than the manufactured product (unless there is a very great disproportion between them as to values) the raw material would naturally take the higher rate?
A. Yes, it might take a higher rate, it might be justified.

Examination by Mr. LYNDE:

Q. Mr. Ripley, can you tell us what the proportion is of live stock traffic on your road as compared to your total tonnage?

A. If you will pass me the annual report, I can tell you very nearly. The tonnage of live animals was 872,509 tons out of
1592 1,289,400. Roughly speaking, I should say about 7 per cent.

The COURT:

Q. What per cent.?

A. About 7 per cent.

Mr. LYNDE:

Q. Now of that tonnage of live stock, about how much of that would you say is handled by your road coming from intermediate points between Kansas City and Chicago?

A. A very small proportion.

Q. Almost the whole of that is live stock that you receive west of Kansas City?

A. Yes.

Q. And made up in through trains at Kansas City and brought through?

A. No sir, not coming east of Kansas City at all.

Q. Then I want to ask you what is the number of cars than your road brings into Chicago or did, during the last year?

A. I cannot answer that question.

Q. Can you tell us about how many men are brought into Chicago by your road, on these trains, to whom return transportation is furnished?

A. That would depend on the number of cars, and, in as much as I cannot give the number of cars, I cannot estimate the number of men.

Mr. COWAN: If you will pardon me, Mr. Lynde, the stock yards report for the year 1904 shows the total number of cars de-
1593 livered to the Santa Fe at Chicago to have been 8,651, in 1903, 12,783.

Mr. LYNDE: How about 1905?

The WITNESS: Those reports are made for the calendar year, while this (referring to annual report of A. T. & S. F. Company) is for the fiscal year.

Q. That is the total number dilivered here at Chicago?

A. Yes.

Q. Can you give us an estimate based on that number, as to the amount of transportation your company issued?

A. No, I cannot. If there were 8,000 cars—it is a mere guess, but I would say perhaps we brought in 2,500 people.

Mr. SEVERANCE:

Q. And took them back?

A. And took them back.

Mr. LYNDE:

Q. Can you state anything as to the proportion of these 8,000 cars that came from this intermediate territory?

A. No, I cannot.

Q. Your experience, prior to becoming president of the Santa Fe Company was mainly in the traffic departments, was it not?

A. Mainly, yes.

Q. Have you had occasion at any time recently to give your personal attention to the details of handling the live stock traffic and the peculiar incidental expenses which there are attached to it, I mean the local traffic?

1594 A. I have not given very close attention to traffic matters for the last ten years.

Q. Well, have you any knowledge or do you profess to have any knowledge with respect to the special services that are rendered on the Northwestern Company's lines in its live stock traffic from local points to Chicago?

A. What company?

Q. Chicago & Northwestern Railway Company.

A. I have no knowledge whatever of it.

Q. Have you any knowledge as to the cost of the special services that are rendered by that company in handling that traffic?

A. None whatever.

Q. Or as to what amount of that traffic is received by it on its branch lines and local pick-up trains?

A. Not at all.

Q. In coming into Chicago and bringing in the product from Kansas City, to what extent, how many cars of that do you bring in in the course of a year?

A. I cannot answer that.

Q. Do you run special provision or meat trains out of Kansas City?

A. I have already stated that we had, I think, practically no regular trains carrying it. We run trains as the business appears for it.

Q. What do you make up that train with after you get such a number of cars of packing house product or dressed meats,

1595 or do you know?

A. Whatever there is there.

Q. You fill up the train as far as you can and you pick up live stock with that train at intermediate points?

A. Not at intermediate points between Kansas City and the Missouri river. That is usually picked up by way-freight and hauled as far as the Mississippi river and then put into through trains.

Q. What are the principal points between Kansas City and the Mississippi river, where you receive live stock?

A. Oh, we take it at all those local stations in there. They are all small towns and they all ship but very little out, very little in the aggregate, taking it in comparison with the business west of Kansas City.

Q. Now your computation which you have submitted in those

three statements is based upon the same tonnage in each train of each commodity?

A. It is based upon all tonnage handled.

Q. You take each train and assume it to have the same tonnage, do you not?

A. Why, there is no assumption there whatever as to what any train has. It is the total cost per ton taking all trains loaded heavy and those loaded light.

Q. It is not then a train computation?

A. No, no, it is a tonnage computation.

1596 Q. Now if it should be a fact that the greater number of tons of revenue paying freight is handled in the dressed meat or packing house product train than in the live stock train, that would affect the result of your computation, would it not, as between the train tonnage of those two trains?

A. As between the train tonnage or to given trains, one loaded with packing house product and the other loaded with live stock, yes.

Q. The one that handles the greatest number of tons will produce the greatest amount of revenue?

A. The one that handles the largest number of net tons.

Q. Do you know as to whether it is a fact that, on the Northwestern lines, the number of cars of packing house product and dressed beef will exceed the number of cars of live stock?

A. I have no knowledge of that subject.

Q. Now in your computation you have taken—in arriving at your terminal expense and at your operating expenses,—you have arrived at them by taking your gross operating expenses and the gross terminal expenses and dividing them by the total amount of tonnage over your road.

A. Yes.

Q. And in the terminals, by the number of cars. Now, if you were trying to make a comparison between two different commodities, as you are here, and it should appear that there were incidental

1597 expenses attached to the handling of one commodity which are not attached to the handling of the other, the effect of that would be, would it not, that you are taking a gross average as between the two, which does not represent the relation between the two?

A. I still think that the comparison is substantially fair, because we have taken in our expenses, into consideration, a great deal of business which costs us very much less to move than either one of those two commodities.

Included in this statement of tonnage on which we have based this cost, is everything; coal, brick, sand, lime, cement, and stuff that is loaded in far greater proportion of paying load to dead weight and that is moved as slowly as we want to move it and moved at our own convenience. It is all put in there and all charged with an equal share of the burden; so that in my judgment the statement I have made is quite fair as to the two items I have discussed.

Q. Undoubtedly it is fair so far as a statement of general average

is concerned; but, as a comparison between two particular commodities, you are including in your computation a great many things that do not properly enter into the computation; is that not true?

A. I don't think so.

Q. You include all the peculiar expenses attached to the handling of other products than packing house products and live stock?

A. No, I have not included them at all.

1598 Q. What you do is to lump everything, taking the general average?

A. That is what I did. I think it is more than fair to both the items that I have discussed.

Q. More than fair to what?

A. To both the items

Mr. SEVERANCE:

Q. That is, as between those items and the rest of the freight?

A. Between those items and the rest of the tonnage.

Mr. LYNDE:

Q. Your road then, does not suffer from any special congestion of the live stock traffic on particular days of the week or particular months of the year, between Chicago and Kansas City?

A. Not between Chicago and Kansas City.

Q. You don't know then as to what peculiar expenses, if any, is attached to the handling of that live stock traffic under those conditions?

A. I do not.

Q. I think you have already stated that it costs more money to pick up live stock at way stations than it does to handle a through train, have you not?

A. I think it does probably.

Q. Is it not a fact that during the last 20 years there has been a general decline in all freight rates throughout this country?

A. Yes.

1599 Q. Is it not a fact that that decline has reached such a point that freight rates are markedly lower in this country than they are anywhere else in this world?

A. That is true.

Q. Now what is that due to?

A. It is due to a variety of causes.

Q. Chiefly competition, is it not?

A. Yes, chiefly competition.

Q. When the Great Western put this contract in force by which the reduction was made in the packing house product and dressed beef rate, is it not true, Mr. Ripley, that, if the Northwestern Company wanted to participate in this traffic it had to meet that rate?

A. It is true.

Mr. SEVERANCE: May I just make one request now? That you will have made up a statement, and hand it in, showing the damages paid for delays on live stock between the Missouri river and Chicago?

A. For what time?

Q. For the years covered by your report; the last four years we will say, if it is convenient for you to do it.

A. Why, it certainly is not convenient and I don't know whether we can get at the figures, but we could easily do it for the year past.

Q. Well, for the year then.

Mr. LYNDE:

1600 Q. Now, it has been testified to here by the general manager of the Chicago & Northwestern Railway Company that the empty mileage on stock cars amounts to 99 per cent., that is to say that not more than one per cent., indeed less than one per cent. goes back loaded. Do you know anything about that on the Northwestern line?

A. I have no knowledge as to the conditions on the Northwestern line as I told you before.

Mr. DAWES:

Q. I want to ask the same question. Have you any special knowledge about the conditions under which stock and dressed beef product are moved on the Burlington road, or the peculiar expenses which may be incidental to both those commodities on that road?

A. Having been absent from the Burlington for fifteen years, I have no knowledge of it.

Q. Since that time, you have not given any special attention to this?

A. No.

Q. I notice one item in your annual report for 1905 which I would like to call your attention to. On page 29, gross earnings and operating expenses, the net earnings for the year ending June 30th, an item of stock yards labor for the year 1905, $58,678.00, 1904, $66,287?

A. Yes.

1601 Q. Should not those items be charged to the cost of handling live stock?

A. No.

Q. Why?

A. Because they are paid for in other ways. Those expenses represent expenses which were incurred at our large yards where we transact a general stock yards business and receive an income for it. Those services are paid for.

Q. Labor as well as supplies?

A. Yes.

Q. So the one hand washes the other?

A. Yes., we hope so. Those are feeding yards where we make a charge for bedding the cars and for supplies furnished and all that sort of thing and where our intention is to get even.

Examination by Mr. BAXTER:

Q. I understood you to say that the classification which you have introduced here was made up in your statistical department?

A. Yes.

Q. Is that presided over by Mr. Peabody?

A. Yes.

Q. How long has that department been in existence on your road?

A. About a year and a half.

Q. Are you aware of the fact that in the case of the Cattle Raisers Association of Texas against the Fort Worth, Denver & Sioux City Road and in the case of the Cattle Raisers Association of
1602 Texas against the Missouri Kansas & Texas Railroad Company, in which your company was a party, Mr. Peabody made up these two exhibits (handing exhibits to witness). Have you ever seen them before?

A. I cannot say as to that, I think so. I think I have seen them. Oh, yes, I have seen those.

Q. Have you confidence in their accuracy and reliability and in the accuracy and reliability of Mr. Peabody?

A. I have no reason to doubt it.

Q. You have no reason then to doubt that those exhibits are correct?

A. I have no reason, whatever, to doubt it.

Q. Now, Mr. Ripley, doesn't your road pay more attention and are you not spending more money in endeavoring to ascertain the cost of hauling your freight, than any other road that you know?

A. I have no knowledge on that subject.

Q. Do you object to telling what you are spending on your statistical department?

A. Well, if it is information that is germane to this inquiry, which is desirable that the public should know, I have no objection, but it does not strike me that I ought to be obliged to state that, or that it bears in any way on this question.

Q. I want to show this: That heretofore the railroad companies of the United States have not paid the attention to trying to
1603 ascertain the cost of the transportation of freight that they are now paying to that feature of their business and that that is the case with your road particularly; that you are using extra efforts, beyond all the other roads, what they have heretofore used, to solve that problem, if you can; is that true?

A. That is possibly true. We made up our minds some time ago that we wanted to know more than we did know about what our business was costing us and what it was costing to operate our various divisions, and what the relative cost of the various classes of business was.

Q. Now before your statistical department took up the inquiry, as I understand it, railroad companies generally could tell you the average cost of hauling a ton of all freight over all portions of their road?

A. Oh, yes.

Q. But they could not tell you the average cost per ton of hauling it over particular divisions of that road.

A. That is right.

Q. Now, your road has ascertained that, by Mr. Peabody's mode of calculation, have they not?

A. We have tried to.

Q. So that you can take a car of freight originating at any point on your road and trace it from that point to Chicago?

A. No, we cannot take an individual car. We can tell
1604 after the event. That is all any of us can do is to tell after the event, after the accounts are made up what it has cost us to move the entire tonnage.

Q. You can tell more than what the other roads can tell. They can only give you the average cost per ton per mile over the whole system.

A. Yes.

Q. And you can give the average cost per ton per mile of hauling a car over any division on your road?

A. We will be able to do that but not on any one car, no.

Q. Not any one car but the average of all cars over all divisions?

A. We expect to be able to tell the average of all cars over each division, and, further, we hope some day to be able to subdivide that so we can tell what those expenses were, what class of expenses.

Q. That is a very material advance, isn't it, in railroad accounting?

A. Well, that is a question that remains to be seen as yet, whether the game is worth the candle.

Q. At all events you are trying to do it?

A. So far as our investigations have gone up to this date, it has occurred to me sometimes that we would be happier if we did not know so much.

Q. How is that?

A. It has occurred to me sometimes that we would be happier if we did not know so much.

Q. But you are trying to ascertain that, in good faith?

A. Yes, we are trying to find out.

1605 Redirect examination by Mr. COWAN:

Q. What does it cost you to clean your cars, if you know, your stock cars?

A. I cannot give you the exact figures.

Q. Is there any appreciable difference in the price per car of cleaning stock cars and the cost of cleaning box cars on the average?

A. Well, it costs a little more to clean stock cars. You don't clean them as often, but it costs more when you do clean them. Every box car, unless it has had something deleterious in it, it is simply a question of sweeping it out, and with the other, it is a question of shoveling it out.

Q. Are not the cars sent out for grain and other traffic left at side tracks to be loaded, the same as stock cars are?

A. No. Oh, excuse me?

Q. Is it not a fact that cars which go out for grain from some local station are set in there and left there to be loaded like stock cars?

A. Oh, yes.

Q. You seem to have something that you want to read so I will wait till you get through.

A. It is a statement as to the extent of the local territory east of Kansas City which is covered by the 20 cent rate; also a statement of switching charges paid in Kansas City.

Q. Just read it then.

1606 A. Well, it varies, it is quite a long statement.

Mr. SEVERANCE: Read the whole statement so we can get it in the record.

A. Well, the business of Armour & Company, on that we pay $4.06; the business of Swift & Company, we pay $4.06, except in cases where it comes out over the Union Pacific and then we pay $5.03. In the case of the Cudahy Packing Company we pay $4.06; in the case of Nelson Morris we pay $5.06; in the case of The Morris Packing Company, $4.06; Swarzschild & Sulzberger, $4.06 when it comes out over the Kansas City Belt and $6.06 when it comes out over the Kansas City Southern; Fowler Packing Company, $4.06; Jacob Dold Packing Company, $4.06.

The 20 cent rate east of Kansas City on cattle applies as far east as Cama, which is 185 miles east from Kansas City and on hogs it applies for 141 miles east of Kansas City and on sheep for 201 miles.

The proportional rate on cattle which you asked about, from Kansas City to Chicago ranges from 15¼ to 20 cents.

Mr. SEVERANCE: That is a statement here of switching charges that you just read and the switching charges are in most cases $3.00 and range from that up to $5.00.

A. $3.00 to $5.00.

Q. And the other is called "Belt Trackage, about" some

1607 estimate?

A. It is based on the Belt line earnings. It really does not belong in there. The switching paid to the various companies outside of the Belt is all I had in mind when I made the original statement. I called it $4.00 and you will see that it is from $3.00 to $5.00.

Q. It is $3.00 in the case of the Armour Packing Company and The Missouri Pacific——

A. No, no, those are the parties who do the switching.

Q. Well, then it is $3.00 for Armour & Company, $3.00 for Swift & Company except Union Pacific which is $4.00, Cudahy is $3.00, Nelson Morris, $4.00, Swarzschild & Sulzberger, $3.00 and when switched to the Kansas City Southern, $5.00; Fowler Packing Company, $3.00 and Jacob Dold Packing Company, $3.00; that is correct, is it?

A. Yes.

Mr. COWAN:

Q. Now will you please be kind enough to make a statement to be filed hereafter showing the comparative cost to your company of live stock shipped from Carrolton,—I assume that as an average—as against packing house products and dressed meats shipped from Kansas City? I will give you a memorandum of that if you will have it made up to be filed.

A. Well, we will hunt that up, that will be the best we can do.

Q. How much additional cost is it in your opinion to
1608 handle a train from Kansas City to Chicago when one of the same tonnage comes at 18 miles an hour and one at 20 miles an hour; is there any material difference in those two as to the cost, with the same tonnage?

A. There is a difference, but nothing that is ascertainable, that can be found out. There is a theoretical difference and, in all probability there is a practical difference, a little difference as between the 18 and 20 miles an hour but it would be impossible to arrive at anything definite.

Q. It would be so small as not to be of much importance?

A. Yes.

Q. Will you please also make up a statement to be filed, showing the items, but not in dollars and cents unless it is convenient, of expenses which are incident to the handling of packing house product and dressed meat, which are not incident to the handling of live stock? Also items which are incident to live stock which are not incident to packing house product and dressed meat?

Mr. SEVERANCE: I don't want that statement filed, I want Mr. Ripley to bring it back here so we can examine him about it.

Mr. COWAN: I said I wanted it filed.

Mr. SEVERANCE: I object to it then, unless we have an opportunity to cross examine and I now notify counsel of that fact.

1609 Mr. COWAN: I notice that you have been interrogated with respect to several points concerning the difference in the cost, and you have named several items and I make this request in order that you may have an opportunity to name all the items, as nearly as they occur to you so that they can be hereafter filed, without attempting to do it this afternoon.

Mr. SEVERANCE: I did not mean this afternoon, but if the statement is prepared by Mr. Ripley we want him to come here with it.

Mr. COWAN: In your statement there appears a difference of one ton in the weight of the packing house product and the dressed meat car. May that not be due to the fact that there is more ice carried in the one than in the other?

A. That may be.

Q. With respect to the relative cost of maintaining the cars, is it your opinion that it costs more for the matter of maintaining the packing house product and dressed meat cars than the live stock?

A. Yes, I think it costs more to maintain a refrigerator car than a live stock car.

Q. When you estimate six and four tenths mills as the cost of maintaining a stock car, I believe you said that it was an abnormal expense for that particular year.

A. Yes.

1610 Q. The six mills which is paid to private stock car companies is supposed to be sufficient to pay for maintenance, and some profit for the ownership of the car?

A. It is supposed to be.

Q. Do you think it serves the purpose of doing that on the average?

A. I have no knowledge on that subject. The stock car companies are furnishing the cars to the railroads for that sum and they are living and maintaining the cars.

Q. Does it cost your company any more to maintain the stock cars than the average cost of the maintenance of the box cars?

A. No, I think it is somewhat less.

Q. Why is that?

A. They have not got to be kept in quite as good condi-
1611 tion. There is less work on a stock car than there is on a box car anyway. You haven't got to keep the roof so tight.

Q. Is the return transportation for the man in charge of live stock considered by you except the item of expense charged to that business?

Mr. SEVERANCE: I object to that as immaterial.

Mr. COWAN:

Q. Except such of it as reduces your passenger earnings by reason of men going free who should pay passenger fare.

Mr. SEVERANCE: That is objected to as immaterial.

The COURT: The objection is overruled.

A. I can hardly say that it enters into our calculations as an item of expense, because the theory is that those people would not travel, or would not travel to any extent; a small percentage of them would travel, if they were not given transportation. On the other hand, we are restive under it because we know that it is abused a great deal and we would like to get away from it if we knew how.

Mr. COWAN:

Q. Mr. Ripley, the printed annual report which I exhibited to you this morning of 1903 of your Company, represents correct statistics as to the financial statement of the operation and the traffic?

A. I think so.

1612 Mr. COWAN: I desire to offer as part of his evidence the annual report of 1903; I happen to have it here, and will offer the one you have if you desire (addressing Mr. Severance).

Mr. SEVERANCE: I have offered the one of 1905.

Mr. COWAN: I happen to have this here (referring to the report of 1903), and thought I would offer it as part of Mr. Ripley's evidence. If you would kindly furnish us one for 1904 and 1905, I should be very glad to have it.

The WITNESS: There is one copy here, there are plenty of others.

Mr. SEVERANCE: I put in the one.

Mr. COWAN: You did not offer it. You may offer it now if you like, or I will offer for you in this connection.

Mr. SEVERANCE: I intended to have it identified so I could ask him about particular items, that was all. I did not intend to offer the whole report.

Mr. BAXTER: I again note the objection I made yesterday to the introduction of these entire reports except for the purposes of getting abstracts from them. I do not want them to go into the transcript.

Mr. COWAN: It will not be contended by me that they shall all go in.

The COURT: You need not incorporate anything except the portions you desire.

1613 (The annual report of the Atchison, Topeka & Santa Fe Railway Company for the year 1903, above referred to, was marked "Ripley, Exhibit "D," and the report of the same company for 1905, was marked "Ripley, Exhibit 1.")

Mr. COWAN:

Q. There was one thing you said in your testimony, that cars were bedded five or six inches deep with sand. I wanted to inquire if you claim to know the depth to which they are bedded for shipment?

Mr. DAWES: I object your Honor, it is his witness, and he is cross examining him.

Mr. COWAN: If I see a man has made a mistake, it is not improper to call his attention to it.

The COURT: Well, you can call his attention to it again.

Mr. COWAN:

Q. You spoke about the weight of the sand as probably about a ton, while five or six inches would probably make four or five tons.

Mr. DAWES: Well, now, wait a minute.

Mr. SEVERANCE: I object to the testimony on the part of the counsel, and move that it be stricken out.

The COURT: The motion to strike out is sustained.

Mr. COWAN:

Q. Well, what do you say about whether your

1613a RIPLEY EX. No. 1.

1905.

Tenth Annual Report of the Atchison, Topeka & Santa Fe Railway Company for the Fiscal Year Ending June 30, 1905.

* * * * * * *

1613b Office of the Atchison, Topeka & Santa Fe Railway System, No. 5 Nassau Street, New York City.

SEPTEMBER 6, 1905.

To the Stockholders:

Your Directors submit the following report for the fiscal year July 1, 1904, to June 30, 1905, inclusive.

The Lines composing the Atchison System, the operations of which are embraced in the following statements, are as follows:

	June 30, 1905.	June 30, 1904.
Atchison, Topeka & Santa Fe Railway	6,839.98 miles.	6,822.53 miles.
Rio Grande & El Paso Railroad	20.17 "	20.17 "
Gulf, Colorado & Santa Fe Railway	1,328.74 "	1,329.05 "
Southern Kansas Railway of Texas	129.17 "	129.17 "
Total	8,318.06 "	8,300.92 "

The average mileage operated during the fiscal year ending June 30, 1905, was 8,305.40 miles. The total increase of mileage was 17.14 miles. The increase in the average number of miles operated compared with the preceding fiscal year was 125.81 miles.

* * * * * * *

1613c *Comparison of Operating Results.*

The following is a statement of the earnings and expenses of the System for the fiscal year ending June 30, 1905, in comparison with the previous year:

	Year Ending June 30, 1905.	Year Ending June 30, 1904.	Increase.	Decrease.
Earnings:				
Passenger	$16,045,380 27	$15,433,773 63	$611,606 64	
Freight	47,404,982 36	47,782,653 23		$353,670 87
Mail and Express	3,804,528 54	3,835,662 08		31,133 54
Miscellaneous	1,116,946 08	1,139,111 26		22,165 18
Total Earnings	$68,375,837 25	$68,171,200 18	$204,637 07	
Operating Expenses:				
Maintenance of Way and Structures	$11,385,418 33	$9,170,234 07	$2,215,184 26	
Maintenance of Equipment	10,914,864 47	10,006,135 41	908,729 06	
Conducting Transportation	21,362,859 64	21,295,960 11	66,899 53	
General Expenses	1,854,241 87	1,749,702 98	104,538 89	
Total Operating Expenses	$45,517,384 31	$42,222,032 57	$3,295,351 74	
Net Earnings from Operation	$22,858,452 94	$25,949,167 61		$3,090,714 67
Percentage of Operating Expenses to Earnings	66.57	61.94	4.63	

No portion of the earnings was derived from the transportation of Company material.

1613d The average tons of revenue freight per loaded-car mile increased from 13.87 to 14.05, or 1.30 per cent.

The average tons of revenue freight carried per freight-train mile increased from 269.81 to 281.85, or 4.46 per cent.

The average freight revenue per freight-train mile increased from $2.75 to $2.82, or 2.55 per cent.

The average passenger revenue per passenger-train mile decreased from $1.15 to $1.12, or 2.61 per cent.

The average total revenue per passenger-train mile decreased from $1.44 to $1.38, or 4.17 per cent.

Tons of revenue freight carried one mile increased 47,820,436 or 1.02 per cent., while freight-car mileage decreased 9,656,080 miles

or 2.01 per cent., and freight-train mileage decreased 571,710 miles or 3.29 per cent.

The number of passengers carried one mile increased 35,380,008 or 5.00 per cent. The passenger-car mileage increased 7,336,313 miles or 8.91 per cent., and the passenger-train mileage increased 1,018,696 miles or 7.62 per cent.

The following is a consolidated statement of the business of the System for each fiscal year during the period since January 1, 1896:

Fiscal year ending June 30.	Average miles operated.	Earnings, including income from other sources.	Expenses, including taxes, rentals, and other charges.	Fixed interest charges.	Adjustment bond interest.	Surplus.
1897 18 mos.	6,443.81	$14,541,649 81	$10,038,455 30	$6,900,007 91	$1,540,380 00	$62,846 60
1898	6,936.02	39,396,126 41	30,524,179 15	4,892,148 30	2,053,840 00	1,825,958 96
1899	7,032.62	40,782,833 47	29,353,818 11	5,188,132 40	2,053,840 00	4,167,343 36
1900	7,341.34	46,438,899 04	29,434,048 13	5,291,326 50	2,053,840 00	9,719,684 41
1901	7,807.31	54,807,479 78	31,510,665 40	5,776,970 83	2,053,840 00	12,465,903 55
1902	7,855.38	60,277,944 33	36,272,402 45	6,385,145 00	2,053,840 00	15,564,526 88
1903	7,965.13	63,668,390 99	40,635,576 48	7,080,645 24	2,053,840 00	13,898,329 27
1904	8,179.59	69,419,975 41	44,641,434 10	7,364,930 00	2,053,840 00	15,359,771 31
1905	8,306.40	69,189,739 65	47,835,883 50	7,557,670 09	2,053,840 00	11,742,346 06

1613*e* The following statement shows the gross earnings of the System lines (exclusive of income from other sources) per mile of road operated for each fiscal year since July 1, 1896:

Year ending June 30.	Gross earnings from operations.	Average per mile of road.
1897	$30,621,230 10	$4,752 04
1898	39,214,099 24	5,653 69
1899	40,513,498 63	5,760 80
1900	46,232,078 23	6,297 49
1901	54,474,822 61	6,977 41
1902	59,135,085 53	7,527 97
1903	62,350,397 28	7,827 92
1904	68,171,200 18	8,334 31
1905	68,375,837 25	8,232 70

The following statement shows the development of the freight and passenger earnings of the System since July 1, 1896:

Year ending June 30.	Freight earnings.	Passenger earnings.
1897	$22,067,686 77	$5,574,288 31
1898	28,588,716 76	7,347,361 59
1899	29,492,585 65	8,126,141 85
1900	33,729,332 83	9,334,661 57
1901	39,052,557 43	11,678,017 25
1902	41,815,607 05	13,439,384 57
1903	44,622,438 71	13,469,985 78
1904	47,762,653 23	15,433,773 63
1905	47,408,982 36	16,045,380 27

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1613*f* RIPLEY EX. "D."

1903.

Eighth Annual Report of The Atchison, Topeka & Santa Fe Railway Company for the Fiscal Year Ending June 30, 1903.

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1613*g* Office of The Atchison, Topeka & Santa Fe Railway System, No. 5 Nassau Street, New York City.

SEPTEMBER 2, 1903.

To the stockholders of The Atchison, Topeka and Santa Fe Railway Company:

Your Directors submit the following report for the fiscal year July 1, 1902, to June 30, 1903, inclusive:

The Lines composing the Atchison System, the operations of which are embraced in the following statements, are as follows:

	June 30, 1903.	June 30, 1902.
Atchison, Topeka & Santa Fe Railway	6,173.61 miles.	6,071.22 miles.*
Rio Grande & El Paso Railroad	20.17 "	20.17 "
Gulf, Colorado & Santa Fe Railway	1,202.89 "	1,177.81 "
Southern California Railway	478.07 "	478.33 "
Southern Kansas Railway of Texas	129.17 "	129.17 "
Total	8,003.91 "	7,876.70 "
Increase	127.21 "	

* NOTE.—This includes the Santa Fe Pacific Railroad and the San Francisco and San Joaquin Valley Railway, which in the last annual report were stated separately.

The average mileage operated during the fiscal year ending June 30, 1903, was 7,965.13 miles. In the above statement 90.94 constructed miles of the Eastern Oklahoma Railway are not included as they had not been turned over to the operating department.

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1613*h* *Comparison of Operating Results.*

The following is a statement of the earnings and expenses of the System for the fiscal year ending June 30, 1903, in comparison with the previous year:

	Year ending June 30, 1903.	Year ending June 30, 1902.	Increase.	Decrease.
Earnings:				
Passenger	$13,469,985 78	$13,439,384 57	$30,601 21	
Freight	44,622,438 71	41,81[illegible],607 05	2,806,831 66	
Mail and Express	3,411,697 68	3,089,122 85	322,574 83	
Miscellaneous	846,275 11	790,971 06	55,304 05	
Total Earnings	$62,350,397 28	$59,135,085 53	$3,215,311 75	
Operating Expenses:				
Maintenance of Way and Structures	$5,304,892 04	$6,141,466 39	$3,163,425 65	
Maintenance of Equipment	8,510,543 09	7,864,951 25	645,591 84	
Conducting Transportation	19,023,145 35	18,442,437 66	580,707 69	
General Expenses	1,598,536 06	1,460,413 33	138,116 73	
Total operating Expenses	$33,437,110 54	$33,909,268 63	$4,527,841 91	
Net Earnings from Operation	$23,913,286 74	$25,225,816 90		$1,312,530 16
Percentage of Operating Expenses to Earnings	61 65	57.34	4.31	

1613*i* No portion of the earnings was derived from the transportation of Company material.

The average tons of revenue freight per loaded car mile increased from 13.68 to 14.15, or 3.44 per cent.

The average tons of revenue freight carried per freight-train mile increased from 247.51 to 279.67, or 12.99 per cent.

The average freight revenue per freight-train mile increased from $2.53 to $2.65, or 4 74 per cent.

The average passenger revenue per passenger-train mile decreased from $1.04 to $1.03, or 0.96 per cent.

The average total revenue per passenger-train mile increased from $1.28 to $1.29, or to 0.78 per cent.

Tons of revenue freight carried one mile increased 473,792,445, or 11.20 per cent., while freight-car mileage increased 23,525,926 miles, or 5.30 per cent., and freight-train mileage increased 290,421 miles, or 1.76 per cent.

The number of passengers carried one mile increased 5,495,773, or 0.90 per cent. The passenger-car mileage increased 2,081,582 miles, or 2.77 per cent., and the passenger-train mileage increased 174,320 miles, or 1.35 per cent.

The following is a consolidated statement of the business of the System for each fiscal year during the period since July 1, 1896:

Fiscal year ending June 30.	Average miles operated.	Earnings, including income from other sources.	Expenses, including taxes, rentals and other charges.	Fixed interest charges.	Adjustment bond interest.	Surplus.
1897	6,443.81	$30,875,729 19	$24,814,425 56	$4,608,858 03	$1,540,380 00	*$87,934 40
1898	6,936.02	39,396,126 41	30,513,553 17	4,992,148 30	2,053,840 00	1,836,584 94
1899	7,032.62	40,762,933 47	29,332,964 11	5,188,132 00	2,053,840 00	4,187,997 36
1900	7,341.34	46,498,889 04	29,414,427 56	5,291,326 50	2,054,840 00	9,739,304 98
1901	7,807.31	54,807,379 78	34,502,039 87	5,776,970 33	2,053,840 00	12,474,529 08
1902	7,855.38	60,275,944 33	36,272,432 45	6,385,145 00	2,053,840 00	15,564,526 88
1903	7,965.13	63,668,390 99	40,635,576 48	7,089,645 24	2,053,840 00	13,898,329 27

*Deficit.

1613*j* The following statement shows the gross earnings of the System lines (exclusive of income from other sources) per mile of road operated for each fiscal year since July 1, 1896:

Year ending June 30.	Gross earnings from operations.	Average per mile of road.
1897	$30,621,230 10	$4,752 04
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1900	33,729,332 83	9,334,661 57
1901	39,052,557 43	11,678,017 25
1902	41,815,607 05	13,439,384 57
1903	44,622,438 71	13,469,985 78

* * * * * * *

1614 evidence is more certain as to the depth or are you more certain as to the weight?

Mr. DAWES: I object to that.

The COURT: Let him answer that.

A. I undoubtedly overstated the depth.

Mr. COWAN:

Q. Have you any particular personal knowledge about either the weight or the depth the sand is put in?

A. Well, I have not had any practice in putting it in, no.

Q. What was it you stated that the weight was?

A. I said I thought about a ton, but of course that is absurd in connection with the other, and upon reflection, the other is absurd too, the depth, there is no necessity for any such depth, and there is no such depth.

Q. Do you charge for the bedding, Mr. Ripley,

A. No, we do not charge.

Q. Mr. Ripley, independent of the figures which you have made in regard to the cost of transportation here, and the method you have used, independent of that fact, from your experience as a man, operating a system of railroad, does it cost more to handle the live stock, or handle the refrigerator cars loaded with dressed meat and packing house product than it does the live stock cars over the same division for equal distances?

1615 Mr. SEVERANCE: I object to that your Honor, as not redirect examination.

The COURT: I will let him answer.

The WITNESS: May I answer that?

The COURT: Yes.

Mr. COWAN: I am asking now, independent of the calculation, as a matter of judgment?

A. I think that, ton for ton, it would cost less to haul live stock, and car for car costs less.

The COURT: Isn't that a fair basis on which to determine your rate, that is the amount of the cost to you of the service?

A. That would be a very disasterous basis for the counrty. It does not cost appreciably less to haul coal than it does pianos. If we should charge the coal rate on the piano, it would be a ridiculous percentage on the value of the article. If we should charge the piano rate on the coal, it would be so prohibitory that everybody would burn wood, or wrap themselves in comfortables.

The COURT: Take what it costs you with a fair profit on everything, why should not that fix the rate, have you answered that?

A. If we did that, we would make the same rate on everything. Practically the movement of each ton of freight would cost within a very narrow range, the movement of each ton of freight costs us the same. Now, if we had no classification, if we based every-

1616 thing on what it cost us with a fair profit, even supposing it were possible to determine what a fair profit would be, if we were to do that, we would prohibit the movement of a very large

number of commodities which now move in a very large volume, and we would be rendering a service in the case of other commodities, which would be ridiculously small as compared with the value of that service to the people who own the property.

Mr. COWAN:

Q. There is one other question, Mr. Ripley, I want to ask you and then I am through.

Independent of the cost of service as a single item, independent of the value of the service as a single item, but considering all of the conditions and circumstances surrounding the traffic and live stock and packing house products, and dressed meats, is it your opinion that the rates on the packing house products and dressed meats ought to be higher than on the live stock?

Mr. SEVERANCE: That is not redirect your Honor, he went into the whole thing.

The COURT: He has answered that before.

Mr. COWAN: The question is put in a very different form from what it was before.

Mr. SEVERANCE: That does not signify.

The COURT: He answered it, I think. You may answer
1617 again.

A. Yes sir, it is.

Recross-examination by Mr. SEVERANCE:

Q. But you said you would make a difference Mr. Ripley, between dressed meats on the one hand and packing house products on the other?

A. I would.

Q. Packing house products ought to be moved the cheaper of the two?

A. Yes sir.

The COURT: I was going to ask him to state his reasons for his answer to Mr. Cowan.

A. Because of the fact that packing house products need not of necessity be moved in a special class of car, and may be moved in a car of cheaper construction and with less dead weight in proportion to the paying load and because they can be loaded per car a great deal heavier.

Q. Why should they both be higher than the live stock?

A. For the reasons which I have tried to explain: Primarily because one car load of packing house products means a condensation of about three car loads of hogs and is worth in dollars and cents nearly as much, if not quite as much as three carloads of hogs; and because a car load of dressed meats means a condensation of about two to three car loads of cattle, and is worth about two or three times as much.

1618 Mr. SEVERANCE:

Q. Now, let me ask you a few questions about that Mr. Ripley.

As I understand you to say, the car load of dressed beef is the condensation of three car loads of cattle?

A. From two to three I said.

Q. Two to three. Now, what per cent. will cattle dress of dressed beef?

A. Well, I would rather you would get some expert on that.

Q. What do you make the statement if you don't know?

A. Why, I know in a general way.

Q. Well, in a general way, how much will they dress then?

A. Do you mean in pounds?

Q. Yes, sir.

A. I can't tell you.

Q. Well, in percentages?

A. I don't know about what they dress in percentages.

Q. Well, now, you say that packing house products represent the condensation of three times, or three car loads of hogs, we will say, is that what I understood you to say, to one car load?

A. Yes sir.

Q. Now what percentage of the full weight of the hog will it dress?

A. I don't profess to have any expert information on the subject.

Q. Would the fact, Mr. Ripley, that it has been testified here by a number of witnesses that a hog would dress 80 to 82 per cent. of its weight have any effect on your judgment that it takes
1619 three car loads of hogs to make a car load of packing house products?

A. Well, I should have great respect for anybody who testified to that effect, or who had any knowledge on the subject; I would subordinate my opinion to his knowledge.

Q. Yes.

A. I do know that ordinarily in our packing house centers that there is about one-third as much dressed beef comes out as—that is about one-third the number of cars of dressed beef goes out as there are of cattle coming in.

Q. What about the products?

A. In the case of products, I think it is about the same.

Q. That is, you mean, there are two cars of dressed beef and product for every three cars that come in?

A. No, I do not, I mean one to three.

Q. Now, isn't it a fact Mr. Ripley, that the tonnage of the cattle or the hogs, either one, going in, together with the tonnage of the ice, and the tonnage of packages, that these products are about—exceeds by at least 20 per cent., or just about 20 per cent., the tonnage of the product?

A. In the case of packing house products?

Q. Yes.

A. In the case of the hogs, I think that may be so, taking the cooperage in, taking everything that goes into the product, but that has not any bearing, in my judgment, on this question.

1620 Q. But you don't know what percentage of that 20 per cent. is hog, and what percentage of it is cooperage?

A. No.

Q. The cooperage pays the same rate when it comes out?
A. I think so.
Q. And the ice pays the same rate when it comes out?
A. No, it don't pay anything, it don't pay a cent.
Q. Don't you pay by weight on the contents?
A. No sir.
Q. How is that?
A. No sir, the ice is free.
Q. The ice goes free?
A. Yes sir.

The WITNESS: Will you excuse me, I have made, without any idea that this would keep me so long, a very important engagement with a man out of town, at four o'clock. I would like to be excused.

The COURT: You would better go and we can ask you any further questions when you come back with your figures.

Mr. SEVERANCE: Yes, we can finish it up when you bring in these figures Monday morning.

The COURT: Whenever it is convenient for him.

The WITNESS: Monday morning would be quite satisfactory to me, any time.

The COURT: Can you get all these figures asked for by Monday?

The WITNESS: I think so.

The COURT: All right, return Monday morning.

1621 Mr. BAXTER: I would like if your honor please, to have these two compilations, made by Mr. Peabody, to appear as exhibits to Mr. Ripley's testimony.

The COURT: Very well.

(The statements here referred to, were marked "Ripley Exhibit D, Mr. Baxter's Cross Examination, and Ripley Exhibit E, Mr. Baxter's Cross Examination" respectively.)

EXHIBITS

NOT

SUITABLE

FOR

MICRO-

FILMING